Supreme Court, U.S.
FILED
DEC 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-1125
No. _____

In The
Supreme Court Of The United States of America

VICTOR W. PRYOR,
Petitioner,
vs.
DELORES PRYOR,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

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December, 1985

SCP

QUESTIONS PRESENTED FOR REVIEW

1. Whether the practice of the Oklahoma Supreme Court in assigning its cases to the Court of Appeals and then refusing to review or publish Court of Appeals decisions which significantly alter Oklahoma law and deviate from established Oklahoma precedent deprives a litigant of his right to due process of law under the Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether the Oklahoma Court of Appeals, Division 4's reversal of a trial court's sustaining of Petitioner's demurrer at trial and entry of judgment without remand to permit Petitioner to introduce evidence violates Petitioner's right to due process of law under the Due Process clause of the Fourteenth Amendment to the United States Constitution.

3. Whether the Oklahoma Court of Appeals, Division 4's suspension of the applicable Oklahoma statute of limitations and pleadings procedure for petitions to vacate a decree of divorce in cases where the responding party is an attorney violates the Petitioner's right to due process of law under the Due Process clause of the Fourteenth Amendment to the United States Constitution.

4. Whether the Oklahoma Court of Appeals, Division 4's application of different standards to parties who are attorneys for undue influence for the vacation of decrees of divorce violates the Petitioner's right to due process of law under the Due Process clause of the Fourteenth Amendment of the United States Constitution.

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IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

VICTOR W. PRYOR,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. _____
	)	
DELORES PRYOR,	)	
	)	
Respondent.	)	

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Oklahoma Supreme Court entered in the above-styled case on October 1, 1985.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the practice of the Oklahoma Supreme Court in assigning its cases to the Court of Appeals and then refusing to review or publish Court of Appeals decisions which significantly alter Oklahoma law and deviate from established Oklahoma precedent deprives a litigant of his right to due process of law under the Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether the Oklahoma Court of Appeals, Division 4's reversal of a trial court's sustaining of Petitioner's demurrer at trial and entry of judgment without remand to permit Petitioner to introduce evidence violates Petitioner's right to due process of law under the Due Process clause of the Fourteenth Amendment to the United States Constitution.

3. Whether the Oklahoma Court of Appeals, Division 4's suspension of the applicable Oklahoma statute of limitations and pleadings procedure for petitions to vacate a decree of divorce in cases where the responding party is an attorney violates the Petitioner's right to due process of law under the Due Process clause of the Fourteenth Amendment to the United States Constitution.

4. Whether the Oklahoma Court of Appeals, Division 4's application of different standards to parties who are attorneys for undue influence for the vacation of decrees of divorce violates the Petitioner's right to due process of law under the Due Process clause of the Fourteenth Amendment of the United States Constitution.

PARTIES TO THE PROCEEDING

The parties to this proceeding are fully listed in the caption hereinabove.

CITATION TO OPINIONS BELOW

The memorandum opinion of the Oklahoma Court of Appeals, Division 4, entered on May 21, 1985, is unreported and is printed in the Appendix hereto, *infra,* p. A-3. The Order of the Oklahoma Supreme Court denying certiorari on October 1, 1985, is unreported and is printed in the Appendix hereto, *infra*, p. A-1.

GROUNDS FOR JURISDICTION

The judgment of the Oklahoma Court of Appeals, Division 4, was entered herein on May 21, 1985, Appendix, p. A-3. Rehearing was denied on June 19, 1985. Appendix, p. A-2. The Oklahoma Supreme Court denied Petitioner's Petition for Writ of Certiorari on October 1, 1985. Appendix, p. A-1.

The jurisdiction of this Court is invoked under 28 USC §1254(1).

STATUTES AND RULES INVOLVED HEREIN

1. 20 Okla. Stat. 1981 §30.1, also known as Laws, 1968, c.157 §1, states:

"There is hereby established an intermediate appellate court to be known as the Court of Appeals of the State of Oklahoma which shall have the power to determine or otherwise dispose of any cases that are assigned to it by the Supreme Court. Its decisions, when final, shall neither be appealable to the Supreme Court nor be subject to reexamination by another division of the Court of Appeals or by the Judges of that Court sitting en banc. The Court of Appeals shall have jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition or any other process when this may be necessary in any case assigned to it by the Supreme Court. A decision of the Court of Appeals may be reviewed by the Supreme Court if a majority of its Justices direct that certiorari be granted, and the Supreme Court may by order recall a case from the Court of Appeals."

Laws 1968, c. 157, §1, eff. July 1, 1970. Amended by Laws 1970, c. 247, §1, emerg. eff. April 15, 1970.

2. 20 Okla. Stat. 1981 §30.5, also known as Laws, 1970, c.247 §5, states:

"The Court of Appeals shall effect disposition of cases assigned to it by a written opinion prepared in such form as the Supreme Court prescribes. No opinion of the Court of Appeals shall be binding or cited as precedent unless it shall have been approved by the majority of the Justices of the Supreme Court for publication in the official reporter. The Supreme Court shall direct which opinion or decision, if any, of the Court of Appeals shall be published in the unofficial reporter. Opinions of the Court of Appeals which ap-

ply settled precedent and do not settle new questions of law shall not be released for publication in the official reporter.

Laws 1970, c. 247, §5, emerg. eff. April 15, 1970. Amended by Laws 1971, c. 85, §1, emerg. eff. April 16, 1971.

3. 12 Okla. Stat. 1981 §1031, also known as Laws, 1969, c.304 §3, states:

"The district court shall have the power to vacate or modify its own judgments or orders within the times prescribed hereafter:

First. By granting a new trial for the cause, within the time and in the manner prescribed in Section 653 of this title.

Second. By a new trial granted in proceedings against defendants constructively summoned, as provided in Section 176 of this title.

Third. For mistake, neglect or omission of the clerk or irregularity in obtaining a judgment or order.

Fourth. For fraud, practiced by the successful party, in obtaining the judgment or order.

Fifth. For erroneous proceedings against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings.

Sixth. For the death of one of the parties before the judgment in the action.

Seventh. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending.

Eighth. For errors in a judgment, shown by an infant in twelve (12) months after arriving at full age, as prescribed in Section 700 of this title.

Ninth. For taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment."

Amended by Laws 1969, c. 304, §3, emerg. eff. April 28, 1969.

4. 12 Okla. Stat. 1981 §1038, also known as R.L.1910, §5274, states:

"Proceedings to vacate or modify a judgment or order, for the causes mentioned in subdivisions four, five and seven, of Section 267[1] must be commenced within two years after the judgment was rendered or order made, unless the party entitled thereto be an infant, or a person of unsound mind and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and in subdivision nine, within one year after the defendant has notice of the judgment. A void judgment may be vacated at any time, on motion of a party, or any person affected thereby. R.L. 1910, § 5274.

[1]Section 1031 of this title.

5. Rule 3.13 of the Oklahoma Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court states:

"A. A review of an opinion of the Court of Appeals in the Supreme Court on writ of certiorari as provided in 20 O.S.1971, § 30.1 is a matter of sound judicial discretion, and will be granted only when there are special and important reasons and a majority of the justices direct that certiorari be granted. The following, while neither controlling nor fully measuring the Supreme Court's discretion, indicate the character of reasons which will be considered:

(1) Where the Court of Appeals has decided a question of substance not heretofore determined by this court;

(2) Where the Court of Appeals has decided a question of substance in a way probably not in accord with applicable decisions of this court or the Supreme Court of the United States;

(3) Where a division of the Court of Appeals has rendered a decision in conflict with the decision of another division of that court;

(4) Where the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a trial court as to call for the exercise of this court's power of supervision.

B. A party who did not peititon for rehearing in the Court of Appeals may not petition for certiorari."

Amended by order of Sept. 3, 1976, eff. Oct. 30, 1976.

STATEMENT OF THE CASE

The Respondent ("Delores") filed a petition to vacate an agreed-upon decree of divorce from the Petitioner ("Victor") approximately two years and two months from the date the decree was entered, alleging Victor made a "material misrepresentation of the parties net worth" in order to induce Delores to sign the decree. Delores also alleged that the support alimony payments provided for in the parties property settlement agreement were indefinite and therefore should be vacated.

At trial, the trial court sustained Victor's demurrer to Delores' fraud allegations and vacated the support alimony provision of the decree, setting support alimony at a definite sum with monthly payments.

The Court of Appeals, Division 4, reversed the trial court's sustaining of Victor's demurrer in an unpublished decision. The Court of Appeals, Division 4, found that where an attorney was a party to a divorce, courts should more closely scrutinize the record to find any undue influence and a minimal showing of undue influence would justify a court in equity in setting aside a decree. The Court of Appeals held that the parties "did not stand in an adversarial posture, but rather stood in a position of trust and confidence not only by reason of their relationship as husband and wife, but particularly by reason of their relationship as attorney and client." The Court of Appeals found the decree of divorce, aside from the support alimony provision, neither inequitable nor substantially unequal, but found substantial evidence that Victor unduly influenced Delores. The Court of Appeals modified the decree of divorce by changing the nature of the alimony from support alimony to property division alimony and ordered Victor to pay interest at 10% per annum on the balance.

Victor petitioned to the Oklahoma Supreme Court for certiorari, after the Court of Appeals, Division 4, denied Victor's Petition for Rehearing, on the grounds that the Court of Appeals had deprived him of his Fourteenth Amendment due process rights by reversing the sustaining of his demurrer and entering a dispositive judgment without giving him the opportunity to present his other evidence. Victor also raised the issues of the Court of Appeals' modification of and departure from previous precedent regarding the requirement of pleading and proving extrinsic fraud and the special application the Court of Appeals had given to attorneys who are divorce litigants. Also, Victor requested the Oklahoma Supreme Court to exercise its powers of supervision over appellate courts and to enforce the two year Statute of

Limitations statute governing petitions to vacate judgments.

The Oklahoma Supreme Court denied Victor's petition for certiorari on October 1, 1985.

ARGUMENT

I

THE OKLAHOMA SUPREME COURT'S DENIAL OF A PETITION FOR CERTIORARI WHERE A DIVISION OF THE OKLAHOMA COURT OF APPEALS HAS RENDERED A NOVEL AND ERRONEOUS INTERPRETATION OF EXISTING AUTHORITY DEPRIVES LITIGANTS OF DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Appeals to the Oklahoma Supreme Court are assigned to a division of the Oklahoma Court of Appeals pursuant to 20 Okla. Stat. 1981 §30.1, also known as Laws, 1970, c.247, §1. No opinion of the Court of Appeals is binding as precedent unless decided by the Oklahoma Supreme Court. Opinions of the Court of Appeals which do not settle new questions of law shall not be released for publication in an official reporter. Twenty O.S. 1981 §30.5, Laws, 1971, c.85, §1.

The Oklahoma Supreme Court, under Rule 3.13 governing petitions for certiorari, indicates that certiorari may be granted if a decision of a division of the Court of Appeals decides a question of substance not heretofore determined, if the decision is contrary to decisions of the Oklahoma Supreme Court or United States Supreme Court and if the Court of Appeals departs from the accepted and equal course of judicial proceedings so as to call for the exercise of the Oklahoma Supreme Court's power of supervision.

The Oklahoma Supreme Court is authorized by

statute to delegate its authority to the Oklahoma Court of Appeals and decides whether the lower court's decision should be published as authoritative precedent. When the Court of Appeals decides a new issue or incorrectly applies existing law, the Supreme Court has the power to accept certiorari to either endorse or repudiate the new precedent set by the Court of Appeals or to correct the erroneous application of existing law.

When the Oklahoma Supreme Court declines to publish a decision of the lower court which sets out new standards or requirements affecting a class of litigants and then refuses to accept certiorari to either establish a new precedent or correct the erroneous decision of the Court of Appeals, the Oklahoma Supreme Court permits *ad hoc* decisions of cases and deprives litigants of the benefit of the doctrine of *stare decisis.* A litigant whose case may be decided by a Court of Appeals which modifies existing law and exempts that litigant from the benefit of established precedent is deprived of due process of law under the Fourteenth Amendment. The refusal of the Oklahoma Supreme Court to accept certiorari in those cases where new standards are created carving out exceptions for litigants who are attorneys and where the Court of Appeals' decision is not published in effect allows the Oklahoma Supreme Court to "sweep the dirt under the carpet" by allowing the law to apply differently to a particular class of litigants.

The process whereby the Oklahoma Supreme Court can accept or deny certiorari from unpublished opinion by the Court of Appeals is violative of the Fourteenth Amendment as a process, where the Court of Appeals' decisions alter existing law. This method of *ad hoc* appellate procedure prevents a class of litigants whose rights are substantially affected by the appellate court's rulings from safely relying upon previous precedent, since that court, in an unpub-

lished opinion, has declared that different rules of law apply to litigants depending upon their occupation.

The Oklahoma Supreme Court, in order to apply the law equally to all litigants, must be required to review or publish Court of Appeals decisions which set new precedent or subject a class of litigants, such as attorneys, to different standards in divorce litigation.

This Court should accept certiorari for the purpose of declaring unconstitutional the Oklahoma Supreme Court's practice of denying certiorari in cases where new law and different duties are imposed upon a certain class of litigants for the reason that the Oklahoma Supreme Court's practice of denying certiorari in cases such as the one at bar unconstitutionally deprives litigants of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

II

THE SELECTIVE APPLICATION OF STATUTES OF LIMITATION BY THE OKLAHOMA COURT OF APPEALS AND THE REFUSAL OF CERTIORARI BY THE OKLAHOMA SUPREME COURT VIOLATES DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The suspension of enforceability of a statute of limitations for the vacation of a decree of divorce unconstitutionally violates a litigant's Fourteenth Amendment right to due process of law. The statutes of limitations of a state such as Oklahoma's 12 O.S. §1038, St. 1931, §565, support the finality of judgments and eliminate the endless relitigation of lawsuits.

The suspension on an *ad hoc* basis of the benefits of a statute of limitations and the application of procedural requirements for vacation of judgments does violence to the concept of equal application of the law to all litigants.

In the case at bar, the Court of Appeals found that no fraud had been committed by Victor, but reversed the trial court's sustaining of his demurrer to the evidence and sustained Delores' petition to vacate upon grounds which Delores had not pleaded, as required by Oklahoma law; further the grounds upon which the Court of Appeals based its ruling — undue influence — was barred by the applicable Oklahoma statute of limitations.

The refusal of the Oklahoma Supreme Court to accept certiorari and correct the unpublished opinion of the Court of Appeals, Division 4, has the effect of denying to litigants the benefit of equal application of Oklahoma's statutes and substituting a capricious and unpredictable method for the determination of appeals. The refusal of the Oklahoma Supreme Court to enforce Victor's right to rely upon the applicable statute of limitations violates the Due Process clause of the Fourteenth Amendment. This Court should accept certiorari for the purpose of correcting the Oklahoma Supreme Court's unequal application of Oklahoma law.

III

THE UNEQUAL BURDENS OF PROOF IMPOSED UPON DIVORCE LITIGANTS WHO ARE ATTORNEYS VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The Oklahoma Supreme Court's refusal to accept certiorari to correct the Court of Appeals, Division 4's imposition of a different standard of proof upon di-

vorce litigants who are attorneys violates the Due Process clause of the Fourteenth Amendment.

The Court of Appeals' decision separates attorneys as a class of divorce litigants and imposes "strict scrutiny" of all matters leading up to an agreed-upon divorce. Under the rationale used by the Court of Appeals, an attorney will be deemed to have a confidential relationship with his opponent in divorce litigation by reason of marriage and additionally will be held to the standards of the attorney-client relationship.

To impose an attorney-client relationship on any attorney seeking an agreed-upon divorce deprives attorneys as a class to equal treatment of divorce law and jeopardizes the finality of all agreed-to divorces in which one party is an attorney. This unequal treatment of litigants on its face violates the Due Process clause of the Fourteenth Amendment requiring the acceptance of certiorari by this Court.

IV

THE DECISION ON THE MERITS OF A LITIGANT'S CLAIM UPON THE REVERSAL OF THE GRANTING OF A DEMURRER VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Due process of law under the Fourteenth Amendment guarantees that a litigant will have an opportunity to present his evidence at trial prior to a determination of a matter in controversy.

The Oklahoma Court of Appeals, Division 4, reversed the trial court's sustaining of Victor's demurrer to the evidence, made findings of fact and entered judgment for Delores without remanding the case to the trial judge to permit Victor to introduce evidence on his behalf. The Oklahoma Supreme Court's denial of Victor's petition for certiorari denied Victor the

right to present evidence on his behalf on the issue of whether the property division aspect of the decree should be vacated.

The question presented to this Court is of substantial importance in the determination of appeals. The right to present evidence in opposition to a claim of a litigant is fundamental to the adversary process. The denial of this right by the Oklahoma Supreme Court violates the Due Process clause of the Fourteenth Amendment. This Court should accept certiorari to uphold the right of Oklahoma litigants to have their day in Court.

Respectfully submitted,

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Oklahoma City, Oklahoma
73106

APPENDIX

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FILED
Supreme Court
State of Oklahoma
OCT 1 1985
James W. Patterson
Clerk

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Tuesday, October 1, 1985

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

60,794 Delores Irene Pryor v. Victor Watson Pryor, Jr.
Certiorari denied.
CONCUR: Simms, C.J., Doolin, V.C.J., Hodges, Lavender, Opala, Wilson, Kauger, JJ.
DISSENT: Hargrave, J.
NOT PARTICIPATING: Summers, J.

/s/ Robert J. Simms
CHIEF JUSTICE

FILED
Court of Appeals
State of Oklahoma
JUN 20 1985
James W. Patterson
Clerk

IN THE COURT OF APPEALS, DIVISION 4
STATE OF OKLAHOMA

THE CLERK IS DIRECTED TO NOTIFY ALL PARTIES OF THE FOLLOWING ORDER:

60,794 Dolores Irene Pryor, Appellant, v. Victor Watson Pryor, Jr., Appellee.
Appellee's Petition for Rehearing is denied.

DONE in conference this 19th day of June, 1985.

/s/ Paul W. Brightmire
PRESIDING JUDGE

FILED
Court of Appeals
State of Oklahoma
MAY 21 1985
James W. Patterson
Clerk

IN THE COURT OF APPEALS, DIVISION 4
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,)
)
Appellant,)
)
vs.) No. 60,794
)
VICTOR WATSON PRYOR, JR.,)
)
Appellee.)

APPEAL FROM THE DISTRICT COURT OF
HUGHES COUNTY, OKLAHOMA

Honorable Preston Trimble, Trial Judge

James W. Bill Berry
Mary M. Johnson
James W. Bill Berry & Associates
Oklahoma City, Oklahoma — For Appellant

Tom. M. Cummings
Cummings & Cummings, Inc.
Oklahoma City, Oklahoma — For Appellee

OPINION

STUBBLEFIELD, J.

Wife appeals the trial court's refusal to vacate the property division and support alimony provisions incorporated in the parties' decree of divorce and its refusal to award her costs and attorney's fees. Husband cross-appeals, claiming that the trial court erred

in vacating and modifying the support alimony provisions of the decree. After reviewing the record and applicable law we modify the order of the trial court.

I

On September 4, 1981, the plaintiff, Dolores Pryor, filed a petition against her ex-husband, Victor W. Pryor, to vacate the parties' decree of divorce entered on July 6, 1979. Her petition alleged that the support alimony provisions were void for indefiniteness and that the alimony and property division provisions were subject to vacation because of the defendant's alleged fraud and misrepresentation of his net worth. The defendant demurred, asserting that the plaintiff's action, which on its face had not been brought within two years of the date of the decree, was barred by the statute of limitations. Plaintiff was thereafter permitted to amend her petition to allege that she had first discovered the defendant's alleged fraud in January of 1980. The defendant denied the plaintiff's allegations.

At trial, the evidence revealed that the parties had been married for 26 years and that four children had been born to the marriage. Plaintiff, who had attained no more than a high school education, had not worked outside of the home until shortly before the parties' separation. By contrast, defendant had attained degrees in both petroleum engineering and law and had been engaged in the private practice of law since 1965. He additionally served as president of two local banks and in the year preceding the parties' divorce earned an income of between $158,000 and $206,000.

In addition to the marital home, the parties' estate consisted of numerous shares of stock and large real estate holdings of both surface and mineral estates. At

the time of their divorce, the defendant had valued the marital estate at $1,400,000. An independent appraiser had not been consulted by either party.

Both parties agreed that the plaintiff was entitled to $700,000, or one half of the marital estate. In agreeing to the terms of the divorce, however, plaintiff did not seek the assistance of counsel and instead relied on the defendant to prepare the petition, the Property Settlement and Alimony Agreement, and the decree of divorce which specifically incorporated the terms of the parties' agreement.

Pursuant to the terms of the agreement, the plaintiff was to receive as her separate property both real and personal property valued at $220,000 which was capable of producing additional income. Defendant was awarded the remaining real and personal property as his separate property. As to alimony, the agreement provided:

> ALIMONY
> Party of the first part [plaintiff] shall keep all income of any kind derived from the property set out above in her name. This income shall be considered property division alimony.
>
> It is further understood and agreed by and between the parties hereto that the party of the second part [defendant] will pay to the party of the first part alimony for her health, maintenance and support in the sum of $2,000.00 less the amount received each month for property division alimony. Accordingly, to determine the amount payable to party of the first part each month for health, maintenance and support alimony, party of the first part shall advise the party of the second part the sum of the income received from all of the property itemized above, and

> party of the second part will pay party of the first part a sum of money for her health, maintenance and support alimony sufficient to give the party of the first part a total alimony payment of $2,000.00 per month. Said payments are to continue for a period of twenty (20) years or until the death or re-marriage of the party of the first part, whichever should come first, said payments to begin August 1, 1979.

Plaintiff read and signed all three documents in the defendant's office on July 6, 1979. The defendant presented the decree for the judge's signature on the same date. Mrs. Pryor was not present and the decree, which had recited the trial court's finding of the existence of an emergency, was granted instanter. At trial, Mr. Pryor could not recall the nature of the emergency and conceded that the petition had contained no such allegation. Mrs. Pryor similarly refuted the decree's recitation that she had been present at the hearing at which time the divorce was granted.

At trial, plaintiff testified that after having had the terms of the agreement explained to her by her son, she advised the defendant of the income which she earned each month on the income-producing property awarded to her as her separate property. Defendant would then deduct that amount from $2,000 to arrive at the amount of support alimony which he owed to the plaintiff for that particular month. Both parties testified that in the event plaintiff's income producing properties earned more than $2,000 per month, defendant would not deduct the excess amount from subsequent alimony payments. Certain income, such as the income which plaintiff earned from the sale of the marital home, was additionally not taken into consideration by the defendant when computing his monthly liability for support alimony.

Plaintiff testified that she had not consulted an attorney because the defendant had advised her that her attorney's fees would be approximately $70,000 and that she was, in any event, receiving one half of the marital estate. Although plaintiff could not specifically identify any of the assets which the defendant had hidden from her, other evidence established that the defendant had misrepresented his annual income for the year preceding the parties' divorce.

Upon the conclusion of the evidence, the defendant demurred to the plaintiff's evidence claiming that it failed to establish the existence of fraud sufficient to warrant the vacation of the decree, or to establish that the decree's support alimony provisions were indefinite and void. The trial court sustained the defendant's demurrer as to the plaintiff's allegations concerning the defendant's alleged fraud and misrepresentation. It vacated the support alimony provisions, however, and ordered the entire $480,000 to be paid as support alimony absent any deductions for the income which plaintiff earned on her separate property. The amount was ordered paid at the same rate of $2,000 per month for a period of twenty years and was subject to termination on the plaintiff's death or remarriage. The defendant was further credited with the sums which he had paid to the plaintiff since the date of the decree.

II

On appeal, plaintiff contends that the trial court erred in refusing to vacate the property division and alimony provisions of the decree because of the defendant's exercise of fraud and undue influence in securing her agreement to the division. Defendant counters by suggesting that the two-year statute of limitations has barred the plaintiff's claim and that the evidence was, in any event, insufficient to support her allegations.

Title 12 O.S. 1981 § 1038, provides that an action to vacate a judgment for fraud must be brought within two years after the judgment is rendered. A vacation claim may, however, be instituted more than two years after judgment by an independent suit in equity in cases in which the suit is predicated upon extrinsic fraud practiced by the successful party in obtaining the judgment. *Chapman v. Chapman* _____ P. 2d _____, 55 O.B.J. 2619 (1984).

Extrinsic fraud differs from intrinsic fraud in that the former consists of "(a) any fraudulent conduct of a successful party (b) which was practiced *outside* of an actual adversary trial or process and (c) which was practiced directly and affirmatively on the defeated party, (d) whereby he was prevented from presenting fully and fairly his side of the case." *Chapman*, _____ P.2d at _____, 55 O.B.J. at 2620 (footnote omitted). It has accordingly been held that in cases in which the wife's allegations of fraud consist of nothing more than "husband's concealment of spousal property in the course of pre-divorce settlement negotiations which operated to induce her to inaction or to make her forego further inquiry during the ensuing court proceedings . . . [husband's] fraud, if any, [is] of an intrinsic nature" and the §1038 time limit operates "to bar wife's equity suit after the lapse of two years from the rendition of the divorce decree." *Id.*

Here, as in *Chapman*, the plaintiff had sought to support her allegations of fraud by proving that a fiduciary relationship had existed between her and her husband before the divorce. The court in *Chapman*, however, rejected this contention primarily because each party had been represented by counsel and was "regarded in law as standing in an adversarial posture." *Id.* The plaintiff had additionally failed to attribute her own inaction to any specific acts of fraud on the part of the defendant.

Herein, plaintiff was not represented by counsel. Moreover, she was actively encouraged by the defendant to forego independent legal representation because of the legal fees entailed and assurances that she would in fact receive one half of the marital estate. Thus, here, unlike *Chapman*, the parties did not stand in an adversarial posture but rather stood in a position of trust and confidence not only by reason of their relationship as husband and wife but particularly by reason of their relationship as attorney and client.

The mere existence of these relationships mandated that the parties' agreement and course of dealing preparatory to the divorce be carefully scrutinized by the trial court. A minimal showing of undue influence or unfair advantage would have justified the court in equity in setting aside the contract which purported to settle their property rights. *Key v. Key*, 388 P.2d 505, 510 (Okla. 1963); *Bradshaw v. Bradshaw*, 578 P.2d 762, 764-65 (Okla. Ct. App. 1977).

In the instant case, there is substantial evidence that defendant unduly influenced his wife with regard to whether and how she should protect her legal rights and thereby gained an unfair advantage. Plaintiff testified that her reluctance to secure her own attorney was directly attributable to the defendant's assertion that the attorney's fees would exceed $70,000 and that she was in any event receiving $700,000, or one half of the marital estate. She testified, however, that she did not understand the income tax consequences of support alimony and indeed did not even understand the provisions of the alimony clause until after they had been explained to her by her son.

In cases of equitable cognizance, a defendant's demurrer to the plaintiff's evidence must be treated as a motion for judgment and the court must weigh the plaintiff's evidence. *Estate of Wilder*, 554 P.2d 788, 790

(Okla. 1976); *Haken V. Harper Oil Co.*, 600 P.2d 1227, 1229-30 (Okla. Ct. App. 1979). If the weight of the evidence favors the defendant, then judgment for the defendant should be rendered. If the weight of the evidence favors the plaintiff, then the defendant should be afforded an opportunity to adduce countervailing evidence. Here, however, the defendant, having testified in plaintiff's case, declined to offer further evidence. In such a circumstance, the entry of judgment by the trial court was appropriate although, we conclude, erroneous. In such a circumstance, an appellate court will weigh the evidence and if it concludes that the trial court's ruling is clearly against the weight of the evidence and that an inequitable division of the marital estate was made by the trial court, it is empowered to modify such judgment and to decree an equitable division of the estate.

We conclude that the trial court's order, denying plaintiff appropriate relief, is clearly against the weight of the evidence and that the plaintiff should be granted judgment modifying the original divorce decree to bring about a just and equitable division of the marital estate.

We have, therefore, closely scrutinized the record. Aside from the support alimony provision we find the original decree entered to be neither inequitable or even substantially unequal. The original alimony provision, however, stands out as a considerable inequity which the trial court's ruling improved but did not entirely correct. The principal injustice lay in the improper designation as support alimony that which was clearly money to be paid in lieu of property division. Even the defendant conceded that the payments would have been so designated had plaintiff been represented by other counsel. The offset of the alimony payment by income from property which had been set aside as plaintiff's sole property

is likewise a considerable injustice and conceivably nullifies part or all of the alimony, resulting in plaintiff obtaining as little as $220,000 out of a $1,400,000 marital estate.

We, therefore, modify the decree of divorce by ordering that the alimony awarded therein shall be alimony in lieu of property, with the manner of payment to remain the same, but with defendant to pay interest on the unpaid balance, at the rate of ten percent per annum, beginning on the date of issuance of the mandate herein. The provision which allows credit on such payments out of plaintiff's separate property is vacated.

III

Plaintiff's last assignment of error deals with the trial court's refusal to award her attorney's fees. *Gardner V. Gardner,* 629 P.2d 1283 (Okla. Ct. App. 1981), is dispositive of the issue. That case holds that where the parties reasonably litigate their differences in a divorce case and where there is substantial property available, each party should be required to pay his own attorney's fees and expenses of litigation. Here, because of the nature of our ruling — that being that the original decree was obtained partly through extrinsic fraud — the circumstances could allow the award of a fee to plaintiff as a surcharge for defendant's conduct. We do not, however, conclude that defendant's conduct was intentionally fraudulent nor deliberately vexatious or oppressive. Perhaps, most importantly, we do not believe that the trial of the case in the manner in which it occurred has resulted in any greater litigation expense than had the divorce petition originally proceeded to trial. The trial court's refusal to award attorney's fees is accordingly free from error.

The order and judgment of the trial court and the original divorce decree are MODIFIED as set forth herein, and otherwise AFFIRMED. Each party shall pay his or her respective costs on appeal.

BRIGHTMIRE, P.J., and RAPP, J., concur.

FILED
HUGHES COUNTY
SEP 6 1983
Lois Merchant, Court Clerk
By: _____

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C-81-270
	)	
VICTOR WATSON PRYOR, JR.,	)	
	)	
Defendant.	)	

JOURNAL ENTRY OF JUDGMENT

This matter comes on for trial before me, the assigned District Judge in and for Hughes County, State of Oklahoma, pursuant to regular setting, on the 27th day of June, 1983. This proceeding and trial is on Plaintiff's Petition to Vacate the Decree of Divorce entered in Case NO. C-79-162, in the District Court of Hughes County, State of Oklahoma, which Decree of Divorce was signed by the Honorable Frank Seay, District Judge in and for Hughes County, State of Oklahoma, on July 6, 1979. Plaintiff appears in person and by and through her attorney of record, James W. Bill Berry and defendant appears in person and by and through his attorney Tom M. Cummings. The Court

proceeds then to hear the testimony of witnesses sworn and examined in open court, to review and examine certain exhibits offered by both Plaintiff and Defendant, and, having heard all the testimony, examined all of the evidence, exhibits, court files, and records, and, both parties having rested, the following findings and orders are entered:

1. THE COURT FINDS that it has jurisdiction over both the parties to and the subject matter of this action.

2. THE COURT FURTHER FINDS that Defendant's Demurrer to the evidence, Plaintiff having rested, should be, and the same is hereby sustained, as to paragraphs 4, 5, 6 and 7, of Plaintiff's original and Amended Petition to Vacate; in all other respects, Defendant's Demurrer to the evidence should be, and the same is hereby overruled.

3. THE COURT FINDS that Plaintiff's evidence does not establish a prima facie case of fraud as alleged in Plaintiff's original Petition and Amended Petition filed herein.

Having announced the Court's decision sustaining the Defendant's Demurrer to Plaintiff's evidence, as hereinabove stated, Defendant then announces that he will stand on his Demurrer, and rests.

Both Plaintiff and Defendant having rested, Defendant's Demurrer to the evidence having been sustained as hereinabove set out, THE COURT FINDS that the provisions of the "Property Settlement and Alimony Agreement" dated July 6, 1979, and expressly incorporated into the Decree of Divorce and made a part of the Decree of Divorce, did not fix the amount of support alimony to be paid to Plaintiff by Defendant in a certain, fixed amount and, as a consequence, this Court should interpret the true meaning and intent of the parties insofar as the "Property Settlement and

Alimony Agreement" is concerned as same relates to support alimony to be paid by Defendant to Dolores Irene Pryor.

IT IS THE ORDER OF THE COURT that the Decree of Divorce in Dolores Irene Pryor versus Victor Watson Pryor, Jr., NO. C-79-162 in the District Court of Hughes County, State of Oklahoma, and the Property Settlement and Alimony Agreement incorporated in and made a part of the Decree be, and the same is hereby vacated insofar as it requires certain payments to be made and things to be done with regard to purported support alimony judgment in favor of Dolores Irene Pryor and against Victor Watson Pryor, Jr. IT IS THE FURTHER ORDER OF THE COURT that Victor Watson Pryor, Jr., pay to Dolores Irene Pryor in Case NO. C-79-162, support alimony in the amount of $480,000.00, and the said Dolores Irene Pryor is granted judgment for support alimony against Victor Watson Pryor, Jr., in the amount of $480,000.00. Said support alimony judgment is to be paid by Victor Watson Pryor, Jr., to Dolores Irene Pryor in the amount of $2,000.00 per month for a period of twenty (20) years, the first payment to begin July 1, 1983. Victor Watson Pryor, Jr., is to be credited against the $480,000.00 support alimony judgment granted herein to Dolores Irene Pryor, those sums paid by Victor Watson Pryor, Jr., to Dolores Irene Pryor as support alimony payments since July 6, 1979. The support alimony judgment and support alimony payments as provided for herein shall terminate upon the death or remarriage of Plaintiff as provided by Title 12, O.S., Section 1289.

IT IS THE FURTHER ORDER OF THE COURT that each of the parties hereto be responsible for the payment of their own attorney fees and the costs in this action.

/s/ Preston Trimble
JUDGE OF THE
DISTRICT COURT

APPROVED AS TO FORM:

JAMES W. BILL BERRY & ASSOCIATES

/s/ James W. Bill Berry
JAMES W. BILL BERRY
2500 First City Place
Oklahoma City, Oklahoma 73102
(405) 236-3167
ATTORNEYS FOR PLAINTIFF

BERRY & BERRY, P.C.

/s/ Tom M. Cummings
TOM M. CUMMINGS
1923 Classen Boulevard
Oklahoma City, Oklahoma 73106
(405) 235-4381
ATTORNEYS FOR DEFENDANT

I, LOIS MERCHANT, Court Clerk for Hughes County, Oklahoma, hereby certify that the foregoing, is a true, correct, and complete copy of the instrument herewith set out as appears of Record in the Court Clerk's Office of Hughes County, Oklahoma.

This 6th day of Sept 1983
Lois Merchant, Court Clerk
By: _____
Deputy

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUL 9 1985
James W. Patterson
CLERK

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

No. 60,794

DOLORES IRENE PRYOR
RESPONDANT
v.
VICTOR WATSON PRYOR
PETITIONER

PETITION FOR WRIT OF CERTIORARI

TOM M. CUMMINGS
CUMMINGS & CUMMINGS
1515 Classen Blvd.,
Suite 100E
Oklahoma City, Oklahoma
73106
(405) 528-5700

ATTORNEYS FOR
PETITIONER

July, 1985

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner, Victor Pryor, and requests this Court to issue a Writ of Certiorari to the Court of Appeals, Division 4, to review the decision entered by that Court herein on May 21, 1985, and shows the Court as follows:

1. The unpublished of the Court of Appeals, Division 4, of May 21, 1985 is appended hereto.

2. The date of the decision the Petitioner, Victor Pryor, seeks to have reviewed was rendered initially on May 21, 1985; the Petitioner's Petition for Rehearing was denied on June 20, 1985.

3. An outline for the reasons for review is as follows:

a. The Court of Appeals, Division 4, has decided a question of substance not heretofore determined by this Court, to wit: that the delayed discovery of the tax consequences of support alimony will toll the statute of limitations set out at 12 O.S. Section 1038.

b. The Court of Appeals, Division 4, has decided a question of substance not heretofore determined by this Court, to wit: that a petition to vacate a decree alleging specific acts of fraud in misrepresenting net worth may be tried and ruled upon on the issue of undue influence where the evidence fails to establish any misrepresentation of net worth.

c. The Court of Appeals, Division 4, has decided a question of substance not heretofore addressed by this Court, to wit: that when an appeals Court reverses the sustaining of a defendant's demurrer at trial, no remand is necessary to enable the defendant to adduce evidence in his behalf, but the issue may be decided upon the Plaintiff's evidence alone.

d. The Court of Appeals, Division 4, has decided a question of substance not heretofore ad-

dressed by this Court, to wit: that an attorney - client relationship in a divorce action will be inferred in cases where one of the parties is an attorney and the other party is not represented by counsel.

e. The Court of Appeals, Division 4, has decided a question of substance probably not in accord with the decision of this Court in *Chapman v. Chapman*, ___ P2d ___, 55 OBAJ 2619 (1984) by ruling that an alleged misrepresentation of net worth by a party in a divorce action constitutes extrinsic fraud.

f. The Court of Appeals, Division 4, has decided a question of substance probably not in accord with the decision of this Court in *Munsey v. Munsey*, Okl. 385 P2d 902 (1963) by vacating the trial court's ruling on the support alimony provision of the divorce decree and substituting property division alimony.

g. The Court of Appeals, Subdivision 4, has decided a question of substance probably not in accord with the decision of this Court in *Price v. Price*, Okl., 484 P2d 532 (1971) by awarding interest on an alimony award in the absence of any request for interest and in the absence of any abuse of discretion on the part of the trial court in failing to award interest.

h. The Court of Appeals, Subdivision 4, has decided a question of substance probably not in accord with the decision of this Court in *State ex rel. Derryberry v. Kerr-McGee Corp.*, Okl. 516 P2d 813 (1973) in that the Court of Appeals has held in this case that the burden of proof applied to petitions alleging fraud, i.e., clear, satisfactory and convincing evidence, does not apply herein because the defendant is an attorney, which fact requires the application of a standard of proof requiring a minimal showing of undue influence to vacate the decree.

i. The Court of Appeals, Subdivision 4, has decided a question of substance probably not in accord

with the decision of this Court in *Mills v. Mills*, 512 P2d 143 (1973) in vacating an alimony award for indefiniteness where the parties agreed to the specific terms of alimony payments and incorporated their agreement into the decree of divorce.

j. The Court of Appeals, Subdivision 4, has decided a question of substance probably not in accord with this Court's decision in *Peters v. Peters*, Okl. 539 P2d 26 (1975) in that the Appeals Court has substituted its judgment for that of the trial court by vacating the trial court's modification of support alimony without a showing that the trial court abused his discretion.

k. The Court of Appeals, Subdivision 4, acted without jurisdiction in vacating the support alimony provision and substituting property division alimony.

4. The facts of this case, briefly stated are as follows:

The parties divorced July 6, 1979, after having discussed divorce since September, 1978 (Trial Transcript, p. 105, 11. 9-19). Two years and two months subsequently, Delores filed her petition to vacate the decree solely on the grounds that Victor had misrepresented to her his net worth. Additionally, Delores sought to vacate the alimony portion of the decree for indefiniteness although the parties had previously entered into a property settlement and alimony agreement which was incorporated into the decree.

At trial, Delores admitted that all of her allegations of fraud were directed only towards misrepresentation of the values of the properties that were divided (Trial transcript, p. 196, 11. 16-21). She admitted that she examined his financial statement preparatory to entering into the property settlement agreement and there were no inaccuracies in it (Trial Transcript, p. 181, 11. 16-22). She further admitted that nothing was hidden from her by Victor; she just did not understand the property settlement agreement

(Trial transcript, p. 192 11. 20-23). The testimony from both parties was that Victor explained to her that any lawyer representing her would require him to make the alimony property division alimony instead of support alimony, but the pay-out arrangement and the denomination of the alimony as support alimony would help him with his taxes and enable him to service the $500,000 in debt he took as part of the settlement (Trial Transcript, p. 79 1. 19- p. 80 1. 9). Also, both parties testified that Victor told Delores that he was just like every other divorced man in that he "just didn't really relish the thought of supporting any son-of-a-bitch that she might marry" (Trial Transcript, p. 91, 11. 2-6; p. 172, 11. 15-19). The trial court sustained Victor's demurrer to the allegations in Delores' petition that he had fraudulently misrepresented his net worth thereby inducing her to enter into the property settlement and alimony agreement. The trial court then vacated the support alimony provision of the agreement which was incorporated into the decree for indefiniteness and set support alimony at $2,000 per month for twenty years, with credit for all sums previously paid by Victor for support alimony. The trial court awarded no interest on the unpaid balance of support alimony.

The Court of Appeals, Division 4, found that the sustaining of the demurrer was against the clear weight of the evidence, holding that the parties stood in a position of trust and confidence by reason of their relationship as husband and wife and particularly by reason of their relationship as attorney and client. Despite the fact that undue influence was not pleaded and there was no direct evidence from Delores that she thought Victor was representing her as an attorney, the Court of Appeals held that a minimal showing of undue influence or unfair advantage was all that was required to vacate the decree and the evidence showed that Victor had unduly influenced Delores

with regard to whether and how she should protect her legal rights. Although the Court found that aside from the alimony provision, the decree was neither inequitable nor substantially unequal, the Court found that the trial court did not go far enough in correcting the inequity and changed the support alimony to property division alimony and awarded interest on the unpaid balance at the rate of 10% per annum.

5. In support of his petition for certioriari, Victor urges the following points:

a. The Court of Appeals, Division 4, in its ruling, has set a new precedent for the modification of divorce decrees by holding, in effect, that the statute of limitations, 12 OS Section 1038, has no effect so long as a litigant claims that he did not understand the tax consequences of the provisions of a decree. Under this new precedent, the clear language of a decree can be circumvented and cases may be re-opened at any time where a litigant claims a misunderstanding of tax consequences, or claims undue influence in the settlement negotiation process.

The purpose of 12 OS Section 1038 is to cut off stale claims and put an end to litigation. The purpose of permitting a litigant to petition to vacate a decree for extrinsic fraud after the two year period has run is to prevent a party from profiting from his hidden fraud by allowing two years from the time the fraud is discovered or should have been discovered. In cases where a party claims undue influence in settlement negotiations or a misunderstanding of the tax consequences of a decree, nothing is hidden from a litigant and there is no equitable consideration justifying the tolling of the statute of limitations. To permit a litigant to toll its statute of limitations for undue influence or a misunderstanding of tax consequences would destroy the effect of 12 OS Section 1308 and

would undermine the logical basis for allowing the tolling of the statute only where the fraud alleged is hidden from a litigant.

This Court has held in *Chapman v. Chapman*, _____ P2d _____ 55 OBAJ 2619 (1984) that a litigant must specifically plead and prove facts showing the precise nature of the fraud alleged and how that fraud deprived the moving party of an opportunity to discover the true facts in order to maintain an action to vacate a petition for fraud. The *Chapman* case clearly establishes that a litigant may petition to vacate a decree for fraud after two years only where the fraud alleged induced the moving party's inaction through a direct and affirmative act. The entry of a decree extinguishes all pre-existing rights of the parties arising out of their formal marital status, so that a wife may not plead a fiduciary relationship beyond the time the decree was entered.

The Court of Appeals ruling in this case, if allowed to stand, would negate the criteria set out in *Chapman*, in large part, by allowing a party to claim a fiduciary relationship with an ex-spouse that continued beyond the date of the decree or else claim that the moving party's lack of understanding of the tax consequences of a decree could toll the statute of limitations. This Court should accept certiorari to resolve this contradiction.

b. The Court of Appeals' ruling also contradicts *Chapman, supra*, in that it permits a litigant to vacate a decree on grounds not alleged in the petition to vacate. Fraud must be specifically pleaded and proved, according to *Chapman*, in order for a movant to prevail.

If a party is permitted to prevail on grounds of undue influence when only misrepresentation of net worth is pleaded, the requirements set out in *Chapman* would be negated. *Chapman* held that a wife's

pleading must specifically allege the specific grounds for fraud relied upon and if the petition does not do so, a demurer should be sustained. Victor urges this Court to grant certiorari to conform the ruling in this case with *Chapman.*

c. The Court of Appeals' ruling distinguishing *Chapman, supra,* sets out new law that where one party to a divorce is an attorney, he will be held to have negotiated the property settlement and alimony provisions of a decree of divorce as an attorney representing his spouse, thus tolling the statute of limitations and giving rise to a standard of proof requiring a minimum showing of undue influence to vacate the decree. This interpretation contradicts the ruling in *Chapman* that the fiduciary relationship of the parties is terminated by the decree and establishes a radically different burden of proof which, in effect, shifts the burden to the party who is an attorney. Additionally, the Court of Appeals ruling has the effect of dispensing with the pleading and proof requirements to establish extrinsic fraud set out in *Chapman.* This court should grant certiorari to establish the evidentiary requirements for establishing an attorney-client relationship between parties negotiating divorce settlements and to establish that the rule set out in *Chapman* for the pleading and proof of extrinsic fraud is not abrogated when one party is an attorney.

d. The Court of Appeals' decision that an appeals court may determine the merits of a case when the sustaining of a demurrer is reversed deprives the litigant who prevailed at trial from exercising his 14th Amendment rights to due process of law by deciding an issue without giving him an opportunity to adduce testimony and other evidence on his behalf. This Court should accept certiorari to affirm a litigant's right to a full and fair trial by requiring the remand of a case when a demurrer to the evidence is sustained and then reversed by an appeals court.

e. The Court of Appeals' ruling substituting property division alimony for support alimony violates the provisions of *Munsey v. Munsey*, Okl., 385 P2d 902 (1963) by expanding the power of an appeals court to allow re-litigation of the provisions of a decree which are not vacated. *Munsey* allows only those specific provisions vacated to be re-litigated. This Court should grant certiorari to establish that the jurisdiction of courts in modifying awards is limited to re-litigation of only those provisions vacated.

f. The award of interest by the Appellate Court when none was granted by the trial court or requested by the movant contradicts the rule set out in *Martin v. Martin*, Okl. 350 P2d (1960) that an award of interest is within the sound discretion of a trial court and will not be disturbed in the absence of a showing of abuse of discretion. The award also violates this Court's ruling in *Price v. Price*, Okl., 484 P2d 532 (1971) because the award disregards the ruinous consequences the interest award has on the husband. Justice Opala's dissent in *Gilbreath v. Gilbreath*, _____ P2d _____, 55 OBAJ 929 (1985) discusses the basis for awarding interest on alimony awards and strongly states that such interest is awarded *only* at the discretion of the trial court. The appeals court should not be empowered to disregard the trial court's ruling and add interest on alimony awards where none was sought at trial or alleged as error on appeal. This Court should accept certiorari to prohibit judicial activism of this nature and affirm the trial court's discretion in deciding the interest issue.

g. The rights of the parties to contract freely regarding property division and alimony settlements has previously been approved by this Court in *Perry v. Perry*, Okl. 551 P2d 256 (1976), to the effect that the parties may freely contract for indefinite alimony awards, although a trial court may not set indefinite

support alimony in the absence of such an agreement. The trial court and appellate court should not be permitted to vacate a contractual support alimony award for indefiniteness if the *Perry* decision is to have any effect. This Court should grant certiorari to affirm the *Perry* decision or else hold that *Perry* has no effect in order to clarify the law regarding the efficacy of support alimony agreement and end the uncertainty facing parties entering into property settlement support alimony agreements.

h. This Court should accept certiorari to clarify the boundaries of the appeals court's jurisdiction in substituting its judgment for that of the trial court to require that an abuse of discretion must be shown from the trial record before a support alimony modification can be vacated and replaced with a property division alimony modification. The Court of Appeals' ruling substituting its judgment for that of the trial court is not supported by any jurisdictional basis since the jurisdiction of the trial court to modify the support alimony provision was limited to the issue of support alimony. *Munsey v. Munsey, supra.* Additionally, the deference required to be given to the trial courts' discretion is undermined by a policy enabling the appeals court to make different findings of fact based on a perceived difference in the weight of the evidence. *Peters v. Peters, supra.* This court should grant certiorari to prevent the appeals court from usurping the position of the trial court as the best judge of the believability of witnesses.

Wherefore, premises considered, the Petitioner respectfully requests this Court to grant certiorari herein for the reasons set out hereinabove for the purpose of vacating the opinion of the Court of Appeals, Division 4, of May 21, 1985, and remanding this cause to the trial court with instructions to sus-

tain its Petitioner's demurrer with respect to the fraud issue and the issue regarding vacation of the support alimony portion of the decree.

/s/ Tom M. Cummings

TOM M. CUMMINGS

CUMMINGS &
CUMMINGS
1515 Classen Blvd.,
Suite 100E
Oklahoma City, Okla.
73106
(405) 528-5507

ATTORNEYS FOR
RESPONDENT

CERTIFICATE OF MAILING

I certify that a true and correct copy of the within and foregoing Petition for Writ of Certiorari was mailed, postage prepaid, to Mr. Bill Berry, Attorney for the Respondent, 2500 First City Place, Oklahoma City, Oklahoma 73102.

/s/ Tom M. Cummings

TOM M. CUMMINGS

[COURT OF APPEALS OPINION OMITTED]

FILED
HUGHES COUNTY
SEP 4, 1981
Lois Merchant, Court Clerk
By _____
Deputy

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. C-81-270
	)	
VICTOR WATSON PRYOR JR.,	)	
	)	
Defendant.	)	

PETITION TO VACATE DECREE OF DIVORCE

Plaintiff, for her cause of action, states:

1. A Divorce Decree was entered in this cause on the 6th day of July, 1979, which Decree has been neither modified nor set aside.

2. At the time of entering the Decree the Court incorporated a property and alimony settlement agreed upon by plaintiff and defendant in its Decree.

3. The agreed Alimony provision entered in the Decree is void because it is terminable on grounds other than those allowed by law and the total amount to be paid by defendant is not a sum certain.

4. Defendant materially misrepresented his net worth in obtaining plaintiff's agreement to the property and alimony settlement and led plaintiff to believe his net worth was less than it actually was and that plaintiff would be receiving support alimony in conjunction with the agreed property settlement.

5. Defendant knew at the time of the agreed property settlement that his net worth was greater than that which he revealed to the plaintiff.

6. Defendant misrepresented his net worth with the intent to induce plaintiff to enter into an unfair property settlement.

7. Plaintiff justifiably relied on defendant's misrepresentation of his net worth in entering into the property division agreement.

8. As a result of entering into the property division agreement, plaintiff has not received an equitable and reasonable property settlement with defendant.

WHEREFORE, plaintiff prays the Court to vacate the Divorce Decree as to alimony and property settlement, declare the alimony provision of the settlement void and enter an alimony provision in a sum certain and terminable upon the proper legal grounds, and vacate the property settlement and enter such settlement as the Court may deem reasonable and equitable.

/s/ Rex K.Travis

REX K. TRAVIS
Attorney for Plaintiff
500 Colcord Drive
Oklahoma City,
Oklahoma 73102
(405) 236-5400

ATTORNEY'S LIEN CLAIMED

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. C-81-270
	)	
	)	
VICTOR WATSON PRYOR JR.,	)	
	)	
Defendant.	)	

D-E-M-U-R-R-E-R

COMES NOW the Defendant herein and demurs to the petition of the plaintiff herein for the reason that the same does not state facts sufficient to constitute a cause of action in favor of plaintiff and against said defendant.

Defendant further demurs specially to plaintiff's petition herein for the reason that said action is barred by the Statute of Limitations as set out in Title 12, O.S.A. §95.

PRYOR AND PETTIS
BY: /s/ Clay B. Pettis
CLAY B. PETTIS

PRYOR AND PETTIS
P.O. Box 858
Holdenville, Oklahoma 74848
(405) 379-6727

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of November, 1981, I mailed a true and correct copy of the foregoing Demurrer to Rex K. Travis, 500 Colcord Drive, Oklahoma City, Oklahoma, 73102, Attorney for Plaintiff.

/s/ Clay B. Pettis
CLAY B. PETTIS

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. C-81-270
	)	
VICTOR WATSON PRYOR JR.,	)	
	)	
Defendant.	)	

ANSWER

COMES NOW the defendant, and for answer to plaintiff's Petition to Vacate filed herein, answering states:

1. Defendant specifically denies that he made any material misrepresentation of his net worth at the time of the property division, but, to the contrary, included property in the marital estate that was his separate property having been inherited from his mother.

2. Defendant affirmatively alleges that plaintiff's Petition to Vacate is barred by laches and statute of limitations, further answering and for further defense, defendant alleges that the support alimony is susceptible to being reduced to a sum certain, and is for a specified number of years.

WHEREFORE, having fully answered, defendant prays that plaintiff take nothing by her Petition to Vacate and that he be discharged herefrom.

/s/ Tom M. Cummings

TOM M. CUMMINGS
Attorney for Defendant
-of-
GROVE, GROVE & CUMMINGS
621 North Robinson,
Suite 460
Oklahoma City,
Oklahoma 73102
(405) 236-1416

LEAVE GRANTED TC FILE ANSWER OUT OF TIME.

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of March, 1982, I mailed a true and correct copy of the above and foregoing Answer to Rex K. Travis Esq., 500 Colcord Drive, Oklahoma City, Oklahoma 73102.

/s/ Tom M. Cummings

TOM M. CUMMINGS

FILED
HUGHES COUNTY
JUL 6, 1979
Lois Merchant, Court Clerk
By _____
Deputy

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
VS	)	No.C-79-162
	)	
VICTOR WATSON PRYOR JR.,	)	
	)	
Defendant.	)	

P-E-T-I-T-I-O-N

The plaintiff, Dolores Irene Pryor, for cause of action against the defendant, Victor Watson Pryor Jr., alleges and states:

1. That Plaintiff is now and has been for more than six (6) months next preceding the filing of the petition herein an actual resident, in good faith, of the State of Oklahoma, and a resident of Hughes County for thirty (30) days at the time her petition was filed herein.

2. That the parties hereto were married on or about February 28, 1953, at Durant, Oklahoma, and have been since that time and are at the present time, husband and wife.

3. That of the marriage aforesaid four children have been born, all of whom have either attained majority or are emancipated from parental control.

4. As grounds for divorce, the plaintiff alleges that a state of complete and irreconcilable incompatibility has arisen between the parties hereto which has completely destroyed the legitimate aims of the marriage of the parties and rendered its continuation impossible, by reason of which the plaintiff is entitled to a decree of divorce from the defendant.

5. That during the marriage of the parties hereto, they have acquired certain real and personal property, which property should be fairly and equitably divided and distributed between the parties hereto.

WHEREFORE, premises considered, the plaintiff prays that upon hearing this cause the Court grant and award the plaintiff a decree of divorce from the defendant; a fair and equitable division and distribution of the property accumulated by the parties; and such other and further relief as to which the plaintiff may be entitled and which may be deemed just and proper by the Court.

DOLORES IRENE PRYOR

/s/ Dolores Irene Pryor
Plaintiff

V-E-R-I-F-I-C-A-T-I-O-N

STATE OF OKLAHOMA)
) SS:
COUNTY OF HUGHES)

Dolores Irene Pryor, being first duly sworn upon oath says that she is the plaintiff above named; that she has read the foregoing petition and knows that contents thereof; and that the facts therein set forth are true.

/s/ Dolores Irene Pryor
DORIS IRENE PRYOR

Subscribed and sworn to before me this 6th day of July, 1979.

/s/ Donna Morris

Notary Public

My Commission Expires:
12-14-82

I, LOIS MERCHANT, Court Clerk for Hughes County, Oklahoma, hereby certify that the foregoing, is a true, correct, and complete copy of the instrument herewith set out as appears of Record in the Court Clerk's Office of Hughes County, Oklahoma.

This 3rd day of June, 1983
Lois Merchant, Court Clerk
By _____
Deputy

FILED
HUGHES COUNTY
JULY 6 1979
Lois Merchant, Court Clerk
By _____
Deputy

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
VS	)	No. C-79-162
	)	
VICTOR WATSON PRYOR JR.,	)	
	)	
Defendant.	)	

DECREE OF DIVORCE

On this 6th day of July, 1979, the above entitled cause comes on for trial on its merits. Plaintiff appears in person and defendant appears in person.

The Court having examined the files and records in this case and having heard the oral testimony of witnesses sworn and examined in open Court, having fully considered the evidence, and being fully advised in the premises, finds:

That all material facts alleged in plaintiff's petition are true;

That the parties hereto were legally married at Durant, Oklahoma, on the 28th day of February, 1953, and have since that time lived as husband and wife; and that of said marriage four children have been born, all of whom have attained majority;

That the plaintiff is now and has been for more than six months next preceding the filing of plaintiff's petition herein a bona fide resident in good faith of the State of Oklahoma, and is now and has been for more than thirty days prior to the filing of plaintiff's petition an actual resident in good faith of Hughes County, Oklahoma;

That the plaintiff is entitled to a divorce upon the grounds of incompatibility, as alleged in plaintiff's petition;

That the parties have made an agreement whereby they have settled their mutual claims concerning a division of all jointly acquired property, both real and personal, of which either or both of them are seized and possessed, said property and division of said property being set out specifically in the Property Settlement and Alimony Agreement dated July 6th, 1979, and executed by the parties hereto;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Dolores Irene Pryor, plaintiff herein, be and she is hereby awarded an absolute decree of divorce from the defendant, Victor Watson Pryor Jr., and the bonds of matrimony heretofore existing between said parties are hereby dissolved, set aside and held for naught, and both parties are released therefrom; PROVIDED, that neither party hereto may marry another person until six (6) months after the date of the decree of divorce hereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the aforesaid property settlement dated July 6th, 1979, and executed by the parties hereto, is hereby approved, and is incorporated into this decree as if set out in full herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that each of the parties hereto are hereby ordered and directed forthwith to execute

and deliver to the other such assignments, bills of sale, deeds or conveyances of record that may be necessary to carry the terms of the division of property into effect, and in the event either of said parties fail to do so within five days from this date, then this decree shall operate as such conveyance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court That defendant assume and pay all jointly acquired debts in full and obligations of the parties hereto outstanding at the time of this decree, with the exception of the indebtedness plaintiff has agreed to assume as set out in the property settlement dated July 6th, 1979. The Court further finds that an emergency exists and this divorce shall be granted instanter.

APPROVED:

/s/Dolores Irene Pryor

DOLORES IRENE PRYOR, Plaintiff

/s/Victor W. Pryor Jr.

VICTOR WATSON PRYOR JR., Defendant

/s/Frank H. Seay

DISTRICT JUDGE

I, LOIS MERCHANT, Court Clerk for Hughes County, Oklahoma, hereby certify that the foregoing is a true, correct, and complete copy of the instrument herewith set out as appears of Record in the Court Clerk's Office of Hughes County, Oklahoma

This 3rd day of June, 1983.

Lois Merchant, Court Clerk

By _____

Deputy

PROPERTY SETTLEMENT AND ALIMONY AGREEMENT

THIS AGREEMENT, made and entered into this the 6th day of July, 1979, between Dolores Irene Pryor, hereinafter known as "party of the first part" and "plaintiff"; and Victor Watson Pryor Jr., hereinafter known as "party of the second part" and "defendant" witnesseth:

Whereas, said parties were heretofore, on the 28th day of February, 1953, legally married and lived together as husband and wife until the 6th day of July, 1979, when by reason of certain differences they separated; and

Whereas, it is the desire to said parties to finally and for all times settle and determine their respective property rights, the right of the party of the first part to alimony and maintenance from said party of the second part, together with any and all other rights and claims existing or which might exist by reason of said marriage relation;

Therefore, the parties hereto, for and in consideration of the mutual promises herein made, and of the payments, conveyances and accounts to be made and performed by the respective parties, hereby covenant and agree as follows:

1. It is understood that agreed that the parties hereto have acquired certain real and personal property during coverture, and that the party of the first part will receive, as and for her full share of the property and assets, free and clear of any and all debt, the following, to-wit:

REAL PROPERTY-SURFACE

Lots 18 and 19, Jimmie Heights Addition to the City of Holdenville, Hughes County, Oklahoma;

A strip of land lying in part of the NE/4 SW/4 of Section 8-T7N-R9E, more particularly described as beginning at a point on the present South right-of-way line of U.S. Highway No. 270, 546.1 feet North of the South line and 934.9 feet West of the East line of said NE/4 SW/4; thence East 26°25' South along said present South right-of-way line a distance of 300 feet to a point; thence South a distance of 221.53 feet to a point; thence West a distance of 268.674 feet to a point; thence North 335.0 feet to the point of beginning, in Hughes County, Oklahoma;

An undivided 1/48 or 1.66 acre interest in the W/2 NW/4 of Section 12, Township 5 North, Range 5 East, Seminole County, Oklahoma;

An undivided 1/4 or 10 acre interest in the NE/4 SW/4 of Section 28-T8N-R8E, Seminole County, Oklahoma;

An undivided 1/4 or 20 acre interest in Lots 4 and 5, Section 6-T7N-R8E, Seminole County, Oklahoma;

An undivided 1/4 or 10 acre interest in the SE/4 NW/4 of Section 6-T7N-R8E, Seminole County, Oklahoma;

An undivided 1/6 or 1.19 acre interest in Lot 7, Section 4-T5N-R5E, Seminole County, Oklahoma;

An undivided 1/6 or .833 acre interest in the N/2 SW/4 NW/4 NE/4 of Section 23-T7N-R7E, Seminole County, Oklahoma;

An undivided 1/32 or 3.75 acre interest in the N/2 NW/4 & SE/4 NW/4 of Section 19-T7N-R7E, Seminole County, Oklahoma;

An undivided 1/20 or 2 acre interest in the NE/4 SW/4 of Section 31-T10N-R8E, Seminole County, Oklahoma;

An undivided .74 acre interest under the South 4.48 acres of the South 8.96 acres of Lot 3, Section 7-T6N-R6E, Seminole County, Oklahoma;

An undivided 1/8 or 20 acre interest in the W/2 W/2 of Section 36-T14N-R7E, Creek County, Oklahoma;

An undivided 1/8 or 10 acre interest in the N/2 NE/4 of Section 11-T15N-R8E, Creek County, Oklahoma;

An undivided 1/8 or 15 acre interest in the W/2 SW/4 and NE/4 SW/4 of Section 34-T13N-R12E, Okmulgee County, Oklahoma;

REAL PROPERTY —
NON-PRODUCING MINERAL INTERESTS

An undivided 3/256 or .46375 acre MI under the NW/4 SW/4 of Section 14-T6N-R7E, Seminole County, Oklahoma;

An undivided 5/16 acre MI under the SE/4 of Section 20-T10N-R8E, Seminole County, Oklahoma;

An undivided 1/16 or 7.5 acre MI under the W/2 NE/4 & SE/4 NE/4 of Section 1-T5N-R7E, Seminole County, Oklahoma;

An undivided 3/40 or 7.5 acre MI under the SE/4 NW/4 & N/2 NW/4 SE/4 & SE/4 NE/4 SW/4 & N/2 NE/4 SW/4 & NE/4 NW/4 SW/4 of Section 1-T6N-R7E, Seminole County, Oklahoma;

An undivided 1/8 or 2.5 acre MI under the North 20.1 acres of Lot 1, Section 1-T10N-R7E, Seminole County, Oklahoma;

An undivided 3/1280 or .1875 acre MI under the E/2 NW/4 of Section 3-T6N-R5E, Seminole County, Oklahoma;

An undivided 1/48 or 2.5 acre MI under the N/2 SW /4 & SW/4 SW/4 of Section 3-T7N-R7E, Seminole County, Oklahoma;

An undivided 7/320 or 2.625 acre MI under the S/2 NE/4 & NE/4 NE/4 of Section 3-T8N-R8E, Seminole County, Oklahoma;

An undivided 1/12 or .59 acre MI under Lot 7, Section 4-T5N-R5E, Seminole County, Oklahoma;

An undivided 3/16 or 15 acre MI under the N/2 NE/4 of Section 6-T6N-R7E, Seminole County, Oklahoma;

An undivided 1/128 or .312 acre MI under Lot 5, Section 6-T7N-R8E, Seminole County, Oklahoma;

An undivided 1/24 or 1.66 acre MI under the NE/4 NW/4 of Section 6-T10N-R6E, Seminole County, Oklahoma;

An undivided 1/32 or 1.25 acre MI under the NE/4 SE/4 of Section 7-T5N-R7E, Seminole County, Oklahoma;

An undivided .37 acre MI under the South 4.48 acres of the South 8.96 acres of Lot 3, Section 7-T6N-R6E, Seminole County, Oklahoma;

An undivided 1/40 or 3 acre MI under the W/2 SE/4 & SE/4 SE/4 of Section 7-T7N-R7E, Seminole County, Oklahoma;

An undivided 3/128 or 1.875 acre MI under the S/2 NW/4 of Section 8-T5N-R7E, Seminole County, Oklahoma;

An undivided 1/128 or .1562 acre MI under the S/2 NW/4 NW/4 of Section 8-T5N-R7E, Seminole County, Oklahoma;

An undivided 1/64 or .9375 acre MI under the SW/4 NE/4 & S/2 NW/4 NE/4 of Section 10-T6N-R7E, Seminole County, Oklahoma;

An undivided 1/16 or 5 acre MI under the N/2 SW/4 of Section 10-T7N-R7E, Seminole County, Oklahoma;

An undivided 1/64 or 1.25 acre MI under the N/2 SW/4 of Section 10-T8N-R8E, Seminole County, Oklahoma;

An undivided 1/128 or .625 acre MI under the SW/4 NW/4 & NW/4 SW/4 of Section 11-T6N-R7E, Seminole County, Oklahoma;

An undivided 17.5/24 acre MI under the West 35 acres of the NW/4 SW/4 of Section 11-T8N-R7E, Seminole County, Oklahoma;

An undivided 1/48 or .416 acre MI under the W/2 NE/4 SW/4 of Section 12-T6N-R5E, Seminole County, Oklahoma;

An undivided 1/480 or .25 acre MI under the W/2 NW/4 & SW/4 SW/4 of Section 13-T6N-R7E, Seminole County, Oklahoma;

An undivided 3/256 or .46375 acre MI under the N/2 NW/4 & NW/4 NE/4 of Section 15-T7N-R7E, Seminole County, Oklahoma;

An undivided 15/192 or 9.375 acre MI under the E/2 SE/4 & SE/4 NE/4 of Section 15-T10N-R5E, Seminole County, Oklahoma;

An undivided 1/64 or .625 acre MI under the NW/4 NE/4 of Section 17-T8N-R7E, Seminole County, Oklahoma;

An undivided 1/32 or .625 acre MI under the E/2 SW/4 SW/4 of Section 17-T8N-R7E, Seminole County, Oklahoma;

An undivided 1/32 or 3.75 acre MI under the N/2 NW/4 & SE/4 NW/4 of Section 19-T7N-R7E, Seminole County, Oklahoma;

An undivided 1/512 or .3125 acre MI under the NW/4 SW/4 of Section 27-T8N-R8E, Seminole County, Oklahoma;

An undivided 1/80 or .50 acre MI under the NE/4 NW/4 of Section 21-T10N-R7E, Seminole County, Oklahoma;

An undivided 1/64 or .312 acre MI under the S/2 NE/4 SW/4 of Section 22-T8N-R8E, Seminole County, Oklahoma;

An undivided 1/12 of 20/63 or 1 acre MI under the NE/4 NW/4 NE/4 of Section 22-T9N-R7E, Seminole County, Oklahoma;

An undivided 1/64 or 2.5 acres MI under the W/2 SW/4 of Section 22; and the N/2 NE/4 of Section 27-T10N-R8E, Seminole County, Oklahoma;

An undivided 1/32 or 4.375 acre MI under the NE/4 NW/4 & E/2 W/2 NW/4 & W/2 SE/4 NW/4 of Section 23; and SW/4 SW/4 of Section 14, all in T4N-R7E, Pontotoc County, Oklahoma;

An undivided 1/160 or .75 acre MI under the W/2 SW/4 & W/2 E/2 SW/4 of Section 20-T4N-R8E, Pontotoc County, Oklahoma;

An undivided 1/12 or .83 acre MI under the S/2 S/2 SW/4 NW/4 of Section 22-T4N-R6E, Pontotoc County, Oklahoma;

An undivided 1/24 or 5 acre MI under the N/2 SW/4 & SE/4 SW/4 of Section 22-T4N-R6E, Pontotoc County, Oklahoma;

An undivided 3/128 or .163 acre MI under the NE/4 NE/4 SE/4 Section 22-T5N-R6E, Pontotoc County, Oklahoma;

A 1/96 ORRI under the N/2 SE/4 SW/4 of Section 27-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 3/128 or 1.4 acre MI under the SE/4 NE/4 & S/2 NE/4 NE/4 of Section 27-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/32 or 1.125 acre MI under the SW/4 NW/4 of Section 34-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/48 or 3.33 acre MI under Lots 3 & 4 and the NE/4 SW/4 and SE/4 SW/4 of Section 7-T15N-R8E, Creek County, Oklahoma;

An undivided 1/8 or 10 acre MI under the N/2 NE/4 of Section 11-T15N-R8E, Creek County, Oklahoma;

An undivided 1/8 or 20 acres MI under the W/2 W/2 Section 36-T14N-R7E, Creek County, Oklahoma;

An undivided 1/48 or 3.33 acre MI under the SE/4 of Section 30-T13N-R12E, Okmulgee County, Oklahoma;

An undivided 1/8 or 15 acre MI under the W/2 SW/4 and NE/4 SW/4 of Section 34-T13N-R12E, Okmulgee County, Oklahoma;

An undivided 1/80 or 1.25 acre MI under the N/2 SE/4 and E/2 NE/4 SW/4 of Section 33-T7S-R9E, Bryan County, Oklahoma;

An undivided 1/128 or 1.25 acre MI under the NW/4 of Section 24-T6N-R3E, Pottawatomie County, Oklahoma;

An undivided 1/128 or 1.25 acre MI under the NW/4 of Section 24-T6N-R3E, Pottawatomie County, Oklahoma;

An undivided 11.667 acre MI under the W/2 SW/4 & SE/4 SW/4 & W/2 SW/4 SE/4 of Section 25-T4N-R2E, Garvin County, Oklahoma;

An undivided 1/8 or 2.5 acre MI under the E/2 SW/4 SW/4 of Section 20-T1S-R2E, Murray County, Oklahoma;

An undivided 1/16 or 1.25 acre MI under the NE/4 NE/4 SE/4 and NE/4 SE/4 SE/4 of Section 20-T1S-R2E, Murray County, Oklahoma;

An undivided 1/16 or 1.25 acre MI under the S/2 SW/4 SW/4 of Section 21-T1S-R2E, Murray County, Oklahoma;

An undivided 1/16 or 1.25 acre MI under the S/2 SE/4 SE/4 of Section 20-T1S-R2E, Murray County, Oklahoma;

REAL PROPERTY-PRODUCING MINERAL INTERESTS

An undivided 7/130 or 4.375 acre MI under the W/2 SW/4 of Section 11-T1N-R11E, Coal County, Oklahoma;

An undivided 1/16 or 10 acre MI under the SW/4 of Section 30-T5N-R12E, less 5 acres for cemetery, Pittsburg County, Oklahoma;

An undivided 1/8 or 5 acre MI under the NE/4 SW/4 of Section 28-T8N-R8E, Seminole County, Oklahoma;

An undivided 1/78 or .50 acre MI under the NE/4 SE/4 and E/2 NW/4 SE/4 and E/2 W/2 NW/4 SE/4 of Section 7-T8N-R8E, less North 15 acres of said tract and less South 16 acres of NE/4 SE/4 of said tract, being 24 acres, Seminole County, Oklahoma;

An undivided 1/20 or 1 acre MI under the S/2 NW/4 SW/4 of Section 1-T5N-R7E, Seminole County, Oklahoma;

An undivided 4.5312 acre MI under the NW/4 NE/4 of Section 7-T8N-R7E, Seminole County, Oklahoma;

An undivided 3/32 or 3.75 acre MI under the NE/4 NW/4 of Section 36-T10N-R7E, Seminole County, Oklahoma;

An undivided 1/120 or .50 acre MI under the NE/4 NW/4 and W/2 NW/4 NE/4 of Section 19-T10N-R6E, Seminole County, Oklahoma;

An undivided 1/160 or .75 acre MI under the N/2 NE/4 and SE/4 NE/4 of Section 4-T6N-R6E, Seminole County, Oklahoma;

An undivided 1/40 or 2 acre MI under the E/2 SW/4 of Section 30-T9N-R6E, Seminole County, Oklahoma;

An undivided 4.48 acre MI under the W/2 NE/4 and SE/4 NE/4 of Section 15-T8N-R6E, Seminole County, Oklahoma;

An undivided 1/320 or .25 acre MI under the N/2 NE/4 of Section 36-T8N-R6E, Seminole County, Oklahoma;

An undivided 1 7/16 acre MI under the N/2 NE/4 & SE/4 NE/4 of Section 19-T9N-R7E, Seminole County, Oklahoma;

An undivided 1/1280 or .125 acre MI under the SW/4 of Section 23-T7N-R6E, Seminole County, Oklahoma;

An undivided 1/96 or 1.25 acre MI under the E/2 NW/4 & SW/4 NW/4 of Section 34-T9N-R6E, Seminole County, Oklahoma;

An undivided 1/32 or 1.25 acre MI under the SE/4 NW/4 of Section 16-T8N-R7E, Seminole County, Oklahoma;

An undivided 3/320 or .75 acre MI under the E/2 NE/4 of Section 10-T5N-R5E, Seminole County, Oklahoma;

An undivided 1 3/32 acre MI under the SE/4 SE/4 of Section 23-T6N-R5E, Seminole County, Oklahoma;

An undivided 1/64 or .625 acre MI under the SW/4 NE/4 of Section 32-T8N-R7E, Seminole County, Oklahoma;

An undivided 3/352 or 1.875 acre MI under the W/2 SE/4 & W/2 E/2 SE/4 & SE/4 SE/4 SE/4 of Section 1; and the N/2 NE/4 & NW/4 SW/4 NE/4 of Section 12; all in T4N-R7E, Pontotoc County, Oklahoma;

An undivided 1/96 or .416 acre MI under the NW/4 NE/4 of Section 22-T5N-R4E, Pontotoc County, Oklahoma;

An undivided 3/128 or 3.014 acre MI under the NW/4 SW/4 & NW/4 NE/4 SW/4 & SW/4 NW/4 & W/2 SE/4 NW/4 & W/2 NE/4 NW/4 & E/2 NW/4 NW/4 of Section 23-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/16 or 2.5 acre MI under the W/2 E/2 NW/4 of Section 22-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/20 or 8 acre MI under the SE/4 SW/4 of Section 22; and the N/2 NE/4 NW/4 & W/2 NW/4 & E/2 NE/4 SE/4 of Section 27, all in T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/24 or 5 acre MI under the W/2 SE/4 & NE/4 SE/4 of Section 14-T5N-R5E, Seminole County, Oklahoma;

An undivided 1/32 or 1.25 acre MI under the SE/4 NW/4 of Section 34-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/32 or 1.25 acre MI under the SE/4 NE/4 of Section 34-T5N-R6E, Pontotoc County, Oklahoma;

A 1/96 ORRI under the NE/4 NW/4 of Section 34-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/96 MI under the SE/4 SE/4 of Section 35-T5N-R6E, Pontotoc County, Oklahoma;

An undivided 1/16 or 5 acre MI under the E/2 SE/4 NE/4 of Section 29; and the SW/4 NW/4 and W/2 SE/4 NW/4 of Section 28; all in Township 8 North, Range 24 East, LeFlore County, Oklahoma;

An undivided 8.572 acre MI under the W/2 SW/4 & SE/4 SW/4 of Section 29-T3N-R1W, Garvin County, Oklahoma;

REAL PROPERTY-OIL AND GAS LEASEHOLD-PRODUCING

An undivided .3199219 WI in the SE/4 SW/4 of Section 31-T6N-R8E, Seminole County, Oklahoma;

An undivided .015596 WI in the Rogers No. 1-30 well located in the SE/4 of Section 30-T5N-R12E, Pittsburg County, Oklahoma;

An undivided 1/320 WI in the SW/4 of Section 29-T18N-R8W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the SE/4 NW/4 of Section 31-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the SE/4 NW/4 NW/4 of Section 31-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the NW/4 NE/4 of Section 31-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the SE/4 NE/4 of Section 31-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the NW/4 SW/4 of Section 31-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/96 WI in the SW/4 of Section 29-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the SW/4 of Section 32-T18N-R7W, Kingfisher County, Oklahoma;

An undivided 1/320 WI in the NE/4 of Section 36-T18N-R8W, Kingfisher County, Oklahoma;

All of the above properties have been previously conveyed to Plaintiff by Defendant herein.

The following properties will be conveyed by Defendant to Plaintiff upon the filing of the final decree of divorce, to-wit:

Lots 12 & 13, Jimmie Heights Addition to the City of Holdenville, Hughes County, Oklahoma.

All other real property, including surface, non-producing mineral interests, producing mineral interests, and producing oil and gas leasehold interests will become the sole property of defendant herein and are now in defendant's name.

Plaintiff herein agrees to assume and pay only the indebtedness against the homestead described as Lots 12 & 13, Jimmie Heights Addition to the City of Holdenville, Hughes County, Oklahoma, to First Federal Savings & Loan Association, Seminole, Oklahoma.

PERSONAL PROPERTY

A. All Plaintiff's personal effects and belongings.

B. All household goods and furnishings now located in the home of the parties hereto, with the exception of the china hutch, the dining room buffet, the rolltop desk, the silver service and

the china set formerly the property of Dina C. Pryor, which said properties shall become the sole possession of defendant herein.

C. 1977 Cadillac four door Brougham.
Plaintiff herein agrees to assume and pay only the indebtedness against the above 1977 Cadillac four door Brougham to Citizens State Bank in Maud, Oklahoma.

All other personal property belonging to the parties hereto, including but not limited to guns, cattle, horses, farm machinery, compressors, etc. and including the defendant's personal effects and belongings shall be and become the sole property of defendant herein.

STOCK

D. Pioneer and Atlas Abstract Company stock (12 1/2 shares) shall be and become the sole property of plaintiff herein.

All other stock, including but not limited to the stock in Citizens State Bank, Maud, Oklahoma, the Peoples State Bank & Trust Co., Holdenville, Oklahoma, Associated Bankers Assurance Company, Mobil Oil Corporation, and Boise Cascade Corporation shall be and become the sole property of defendant. The stock in Pioneer and Atlas Abstract Company is now in plaintiff's name. All other stock is now in the name of the defendant herein.

CASH

All cash now in the name of the party of the first part shall remain the property of party of the first part and all cash now in the name of the party of the second part shall remain the property of the party of the second part.

INSURANCE

Party of the second part agrees to keep life insurance policies in force and current with benefits payable to the party of the first part as they are now, said policies being set out below, to-wit:

Equitable Assurance Co., Policy No. 9870-I, effective January 1, 1974, in the face amount of $20,000.00

Mid-Continent Life Insurance Co., Policy No. 267318, effective December 28, 1978, in the face amount of $100,000.00

All other current policies insuring the life of party of the second part are now owned by party of the first part and party of the first part shall have the option of paying the premiums on those policies and keeping them in force or of cancelling the policies.

ALIMONY

Party of the first part shall keep all income of any kind derived from the property set out above in her name. This income shall be considered property division alimony.

It is further understood and agreed by and between the parties hereto that the party of the second part will pay to the party of the first part alimony for her health, maintenance and support in the sum of $2,000.00 less the amount received each month for property division alimony. Accordingly, to determine the amount payable to party of the first part each month for health, maintenance and support alimony, party of the first part shall advise the party of the second part the sum of the income received from all of the property itemized above, and party of the second part will pay party of the first part a sum of money for her health, maintenance and support alimony suffi-

cient to give the party of the first part a total alimony payment of $2,000.00 per month. Said payments are to continue for a period of twenty (20) years or until the death or re-marriage of the party of the first part, whichever should come first, said payments to begin August 1, 1979.

It is further understood and agreed between the parties hereto that all remaining items of real property and personal property not specifically set out above will be set over in the name of the party of the second part with no right, title and interest therein and thereunto remaining in the party of the first part. It is further agreed that party of the second part agrees to assume and pay all outstanding indebtedness incurred by the parties hereto during their coverture up to and including July 6th, 1979, with the exception of the indebtedness against the home of the parties hereto and the 1977 Cadillac Brougham, which items become the property of the party of the first part, and which indebtedness party of the first part has agreed to assume and pay.

Parties hereto agree to execute deeds, bills of sale and assignment of stock certificates and other related instruments to carry out the intent of this contract.

The terms of this agreement may, upon request of either party be confirmed and incorporated as a part of any judgment and decree of divorce entered by a court of competent jurisdiction in the State of Oklahoma.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first hereinabove written.

/s/ Dolores Irene Pryor

Dolores Irene Pryor,
Party of the First Part

/s/ Victor Watson Pryor Jr.
Victor Watson Pryor Jr.,
Party of the Second Part

APPROVED:

/s/ Frank H. Seay
District Judge

STATE OF OKLAHOMA)
) SS:
COUNTY OF HUGHES)

Before me, a Notary Public in and for the above named County and State personally appeared on this the 6th day of July, 1979, Dolores Irene Pryor and Victor Watson Pryor Jr., to me known to be the identical persons who executed the foregoing instrument in my presence and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Dated the day and year last hereinabove written.

/s/ Donna Morris
Notary Public

My Commission Expires:
12-14-82

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUL 21 1983
Ross N. Lillard, Jr.
CLERK

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

DOLORES IRENE PRYOR,)
)
Appellant,)
)
vs.) NO. 60794
)
VICTOR WATSON PRYOR, JR.,)
)
Appellee.)

PETITION IN ERROR
AND PRELIMINARY STATEMENT

A. TRIAL COURT HISTORY

COURT: District Court CASE NO. C-81-270

COUNTY: Hughes JUDGE: Preston Trimble

DATE JUDGMENT OR ORDER APPEALED PRONOUNCED: June 27, 1983

POST-TRIAL MOTION?

1. None.

DATE OF DISPOSITION OF POST-TRIAL MOTION OR MOTIONS: N/A.

B. DISPOSITION IN TRIAL COURT

NATURE OF JUDGMENT OR ORDER APPELLANT SEEKS TO REVERSE: Trial Court sustained defendant's Demurrer to plaintiff's evidence on issue of whether fraud was perpetrated by defendant on

plaintiff as alleged in plaintiff's Petition and Amended Petition to Vacate prior Judgment and Decree of Divorce, and overruled defendant's Demurrer to plaintiff's evidence on all other issues. Appellant seeks to reverse that portion of the Judge's Judgment and Order sustaining defendant's Demurrer to plaintiff's evidence. Judgment was rendered for plaintiff on issue of support alimony.

RELIEF SOUGHT BY APPEALLANT: Petition to Vacate Decree which incorporated private Property Settlement Agreement between plaintiff and defendant filed on July 6, 1979. The Petition to Vacate sought an order from the Trial Court as to the provisions of the Divorce Decree of July 6, 1979 as to division of property, alimony in lieu of property and support alimony.

RELIEF GRANTED: The Petition to Vacate was sustained as to the issue of support alimony and the Decree of July 6, 1977 was modified to state the intent of the parties as to support alimony.

RELIEF SOUGHT BY APPELLEE: NONE.

Exhibit "A" (attached): Court Minute of June 27, 1983. As of the preparation of this Petition-in-Error counsel have been unable to agree on a Journal Entry, although proposed order has been submitted by appellant to appellee.

C. SUMMARY OF CASE

Exhibit "B" (attached):

D. ISSUES AND ERRORS PROPOSED TO BE RAISED ON APPEAL

Exhibit "C" (attached):

ANY RELATED OR PRIOR APPEALS: No.

COURT REPORTERS' ESTIMATE OF NUMBER OF TRANSCRIBED PAGES: 175.

E. IS APPELLANT WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE APPEAL BY PREDECISIONAL CONFERENCE UNDER COURT OF APPEALS RULE 3.7 IF OFFERED THE OPPORTUNITY?

YES.

F. IS APPELLANT AGREEABLE TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER SUPREME COURT RULE (Fast Track)

NO.

Exhibit "D" (attached.)

G. NAME OF COUNSEL

ATTORNEY FOR APPELLANT:	ATTORNEY FOR APPELLEE:
Name: James W. Bill Berry	Name: Tom M. Cummings
Firm: James W. Bill Berry & Associates	Firm: Berry & Berry
Address: 2500 First City Place, Oklahoma City, OK 73102	Address: 1923 Classen Blvd., Oklahoma City, OK 73106
Telephone: 405/236-3167	Telephone: 405/235-4381

H. DATE: July 21, 1983. VERIFIED BY:

/s/ James W. Bill Berry

JAMES W. BILL BERRY
JAMES W. BILL BERRY
& ASSOCIATES
2500 First City Place
Oklahoma City,
Oklahoma 73102
405/236/3167

I. AFFIDAVIT OF MAIL TO APPELLEE AND DISTRICT

I hereby certify that a true and correct copy of the above and foregoing Petition in Error (and Preliminary Statement) was mailed this 21st day of July, 1983, to Tom M. Cummings, Berry & Berry, 1923 Classen Blvd. Oklahoma City, Oklahoma 73106, by depositing it in the U.S. Mails, postage prepaid.

I further certify that copy of the above and foregoing Petition in Error was mailed to the Office of the Court Clerk of Hughes County for filing on the 21st day of July, 1983.

/s/ James W. Bill Berry
JAMES W. BILL BERRY

A-60

HUGHES
IN THE DISTRICT COURT OF ~~CLEVELAND~~ COUNTY, STATE OF OKLAHOMA

Pryor — Plaintiff(s)
Berry — Attorney(s) for Plaintiff(s)

—vs—

Case No. C81-270

Pryor — Defendant(s)
Cummings — Attorney(s) for Defendant(s)

COURT MINUTE

Date: 27 June 83 **Judge** Trimble

Judgment for the plaintiff as per journal entry.

Preston Trimble
Judge

FILED
HUGHES COUNTY
JUL 1 1983
JUNE MERCHANT, Court Clerk
By [illegible]

JUNE MERCHANT, Court Clerk for Hughes County
hereby certify that the foregoing is
a true and complete copy of the
minutes as set out as appears of Record
in the Court Clerk's Office of Hughes County, Oklahoma
This 1st day of July, 1983
[illegible] Court Clerk
By _____ Deputy

EXHIBIT "A"

(4)

SUMMARY OF CASE / EXHIBIT "B"

On September 4, 1981, appellant filed a "PETITION TO VACATE DECREE OF DIVORCE" alleging that the alimony provisions in the Decree were void being terminable on grounds other than those allowed by law and the aggregate amount of support alimony was not in a sum certain; that the appellee had made material misrepresentations to appellant in inducing her to enter into the property division agreement, and that appellant relied upon appellee's misrepresentations. A financial statement prepared by appellee and exhibited to appellant prior to the execution of the Property Settlement on July 6, 1979 was the most significant exhibit introduced at trial. The net worth of the parties, as both agreed in their testimony was $1,430,000.00 (rounded). Appellant agreed to receive property in kind and money so as to give her a division of property equaling one-half of $1,430,000.00. Appellant got property worth $220,000.00 and $480,000.00 in support alimony. Appellee received credit on support alimony payments to the extent of monthly income appellant received from the producing oil and gas properties. Appellee's position is that appellant agreed to take $480,000.00 in support alimony which would terminate upon death or remarriage. Appellant's position is that appellee represented to her she was receiving $700,000.00 total by way of property division, $230,000.00 in property and $480,000.00 payable at $2,000.00 per month. She never agreed to support alimony. Appellee, a practicing attorney, persuaded appellant not to seek legal counsel. Appellant prepared all of the pleadings including the Decree and Property Settlement Agreement, recite that appellant was present and testified as to grounds, and the fact that the property settlement was agreeable with her and other matters, she was not in fact present at any time before the Court.

EXHIBIT "C"

1. The Trial Court erred in sustaining defendant's Demurrer to plaintiff's evidence.

a. The Trial Court sustained defendant's Demurrer to the evidence on the narrow grounds that plaintiff had not established a prima facie case as to the allegations made in paragraphs 4, 5, 6, and 7 of her Petition to Vacate. Appellant's position and issues on appeal will be that the clear and convincing evidence not only supported her allegations of misrepresentations and fraud, but there were also substantial irregularities worked by the appellee in obtaining the Judgment from Judge Frank Seay and, further, that there was more than the judicially recognized special confidential and fiduciary relationship between the parties because appellee was not only the husband, but the attorney and there was a substantial unfair advantage worked upon her and a substantial amount of undue influence exerted upon her, by appellee.

2. That the evidence was clear and convincing to establish that by reason of the misrepresentations made by appellee to the Honorable Frank Seay on the date of the original Decree, appellant not being present to testify as to jurisdiction, grounds and other essential jurisdictional requirements, the entire Decree of July 6, 1979 was void for the reason that jurisdiction had to fail.

3. Error of the Trial Court in not awarding to appellant her attorney's fees and costs.

4. The weight of the evidence established, and the Trial Court should have found that the Decree and Judgment entered on July 6, 1979 was void having been obtained by appellee by reason of Section 1031, Title 12 — subsection three, of the Oklahoma Statutes,

to-wit; the appellee practiced fraud upon both appellant and the Court when he advised the Court that there was an emergency sufficient to waive the statutory waiting period before the granting of a divorce; by advising the Court that the Property Settlement was agreeable to the appellant; by preparing all of the pleadings filed in the case which on their face bear material misrepresentations.

5. The Trial Court erred by limiting his findings to the narrow issues to fraud as contained in his Judgment, the weight of the evidence establishing that fraud had been practiced by the appellee both upon the appellant and the Court as provided in Title 12, Oklahoma Statutes, Section 1031, subsection four.

6. Error of the Court in not setting aside and vacating the Decree of July 6, 1979 there having been ample evidence to the Trial Court to establish both undue influence and unfair advantage practiced upon appellant by appellee in securing her signature to the Property Settlement Agreement and the Decree of Divorce, appellant being both husband and attorney.

EXHIBIT "D"

Appellant is appealing primarily the issue of whether the amount of $480,000.00 should have been awarded to her as alimony in lieu of property, rather than as support alimony, the evidence establishing clearly that both appellant and appellee agreed that the marital estate was valued at $1,430,000.00 and that she should receive one-half of it. It is the opinion of the appellant that under the case law in Oklahoma the Courts (including the Appellate Courts) must carefully scrutinize any course of dealing between a husband and wife where the opportunity of one to take undue advantage over the other exists and it is appellant's position, being the wife and her husband being a practicing member of the Oklahoma Bar that there did

exist a special confidential and fiduciary relationship between them and that the Court should carefully scrutinize the dealings between them which resulted in, from appellant's point of view, a very unfair and disadvantageous property settlement and alimony agreement and that, accordingly, the Appellate Court in this case should review all of the written record and appellant should be given opportunity to advance written argument to the Court in support of her positon.

IN THE DISTRICT COURT OF HUGHES COUNTY
STATE OF OKLAHOMA

DOLORES IRENE PRYOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C-81-270
	)	
VICTOR WATSON PRYOR, JR.,	)	
	)	
Defendant.	)	

DESIGNATION OF RECORD ON APPEAL

Comes now the plaintiff, Dolores Irene Pryor, having filed an appeal in the Supreme Court of the State of Oklahoma, and designates as record on appeal the following:

1. All pleadings, orders, journal entries, exhibits and any other documents filed in this case.

2. Transcripts of all proceedings reported by the official court reporter in this case.

JAMES W. BILL BERRY &
ASSOCIATES

By: /s/ James W. Bill Berry
JAMES W. BILL BERRY
2500 First City Place
Oklahoma City, Oklahoma 73102
405/236-3167

Attorneys for Plaintiff

CERTIFICATE OF FILING AND SERVICE

This is to certify that on the 21st day of July, 1983, I mailed a copy hereof to Lee Peck, Court Reporter, c/o Judge Preston Trimble, Cleveland County Courthouse, Norman, Oklahoma 73069; filed a copy hereof with the Clerk of the Supreme Court of Oklahoma; and mailed a copy hereof to Tom M. Cummings, Berry & Berry, 1923 Classen Blvd., Oklahoma City, Oklahoma 73106, attorney for defendant.

/s/ James W. Bill Berry
JAMES W. BILL BERRY

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUL 27, 1983
Ross N. Lillard, Jr.
CLERK

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

DOLORES IRENE PRYOR, Apellant,	)	
Vs.	)	No. 60794
VICTOR WATSON PRYOR, JR., Appellee.	)	

RESPONSE TO PETITION IN
ERROR AND PRELIMINARY STATEMENT

A. OBJECTION TO APPEAL?

Should this appeal be dismissed at this time?

Yes	No
	X

B. IF OTHER THAN ENTIRE TRANSCRIPT IS DESIGNATED BY APPELLANT ESTIMATE NUMBER OF ADDITIONAL PAGES NEEDED.
not applicable

C. IS APPELLEE WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE APPEAL BY PRE-DECISIONAL CONFERENCE UNDER 3.7 IF OFFERED THE OPPORTUNITY?

Yes	No
	X

D. WOULD APPELLEE BE WILLING TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER SUPREME COURT RULE?

Yes	No
X	

(1) If not agreeable, why not? *not applicable*

E. APPELLEES' BRIEF STATEMENT AS TO CASE.

See attached Exhibit "A".

F. DATE: July 27, 1983

Verified by: /s/ Tom M. Cummings
Firm: Berry & Berry, P.C.
Address: 1923 Classen Blvd.
Oklahoma City, OK 73106
Telephone: (405) 235-4381

G. AFFIDAVIT OF MAILING TO APPELLANT AND DISTRICT COURT CLERK ON DAY FILED IN SUPREME COURT.

I hereby certify that and correct copy of the above and foregoing response to Petition in Error was mailed this 27th day of July, 1983, to James W. "Bill" Berry, Attorney for the Appellant, 2500 First City Place, Oklahoma City, Oklahoma 73102, by depositing it in the U.S. Mails, postage prepaid.

I further certify that a copy of the above and foregoing response to Petition in Error was filed in the Office of the Court Clerk of Hughes County on the 27th day of July, 1983.

/s/ Tom M. Cummings
TOM M. CUMMINGS

EXHIBIT "A"

The parties herein were divorced in Hughes County, Oklahoma, on July 6, 1979. On September 4, 1981, two years and two months after the Decree was entered the plaintiff filed a Petition to Vacate the Decree of Divorce on two grounds. The first ground was that the agreed alimony provision was void because it was terminable on grounds other than those allowed by law and the total amount to be paid by defendant was not a sum certain. Secondly, the Petition alleged that the Decree was voidable because of the defendant's alleged fraud. The plaintiff, Dolores, did not allege as grounds for vacation of the Decree irregularity in obtaining a judgment. Prior to the parties entering into the settlement agreement, Dolores was given access to all the financial books and records of her husband, Victor, and Dolores and Victor discussed the settlement at great length. Dolores specifically agreed to the support alimony arrangement in which Victor was to pay to Dolores the sum of $2,000.00 per month but he was to receive credit toward that $2,000.00 per month support alimony payment from the income produced by Dolores' oil properties. Within two weeks after the entry of the Decree, Dolores discussed her feeling that the settlement was unfair with an attorney, Robert G. Grove, who advised her to seek the services of an attorney and an accountant if she believed that she had been shortchanged. At trial, Judge Preston Trimble found that the plaintiff had wholly failed to establish a prima facie case for fraud and found that the alimony provision was void for vagueness. The Court thereupon found that the defendant should pay the plaintiff a sum of $2,000.00 per month from the time of the divorce for a period of 20 years or until the death or remarriage of Dolores and that at the end of the 20 year period Victor should pay the arrearage which had accrued to date at the rate of $2,000.00 per month.

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUL 27 1983
Ross N. Lillard, Jr.
CLERK

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

DOLORES IRENE PRYOR,)
)
Apellant,)
)
vs.) No. 60794
)
VICTOR WATSON PRYOR, JR.,)
)
Appellee.)

CROSS-PETITION IN ERROR
AND PRELIMINARY STATEMENT

A. TRIAL COURT HISTORY

COURT: District Court CASE NO. C-81-270

COUNTY: Hughes JUDGE: Preston Trimble

DATE JUDGMENT OR ORDER APPEALED PRONOUNCED: June 27, 1983

POST-TRIAL MOTION? No.

DATE OF DISPOSITION OF POST-TRIAL MOTION OR MOTIONS.

Not Applicable.

B. DISPOSITION IN TRIAL COURT

NATURE OF JUDGMENT OR ORDER APPELLEE (CROSS-APPELLANT) SEEKS TO REVERSE: The Appellee (Cross-Appellant) seeks to reverse that por-

tion of the Judgment and Order of the Court vacating the support alimony portion of the Decree of Divorce herein. Judgment was rendered for the defendant on the issue of whether the defendant had defrauded the plaintiff in entering into the settlement agreement.

RELIEF SOUGHT BY APPELLEE (CROSS-APPELLANT): None.

RELIEF GRANTED: Not Applicable.

RELIEF SOUGHT BY APPELLANT (CROSS-APPELLEE): The Appellant (Cross-Appellee) sought to vacate the Divorce Decree as a whole alleging fraud in inducing the Appellant (Cross-Appellee) to enter into the property settlement agreement between the parties filed on July 6, 1979. Additionally, the Appellant (Cross-Appellee) sought to vacate the support alimony portion of the award as being void for vagueness.

RELIEF GRANTED: The Petition to Vacate was sustained as to the issue of support alimony and the Decree of July 6, 1977, was modified to require the Appellee (Cross-Appellant) to pay the sum of $2,000.00 per month without credit for any amounts paid by the income producing properties awarded to the Appellant (Cross-Appellee) as set out in the property settlement agreement and further required the Appellee (Cross-Appellant) to pay the arrearage at the end of the 20 year period at the rate of $2,000.00 per month until paid.

See Exhibit "A" attached: Court Minute of June 27, 1983. As of the preparation of this Petition in Error, there has been no journal entry filed with the Court.

C. SUMMARY OF CASE

See Exhibit "B" attached.

D. ISSUES AND ERRORS PROPOSED TO BE RAISED ON APPEAL

See Exhibit "C" attached.

ANY RELATED OR PRIOR APPEALS:

Yes	No
____	X

Court Reporters' estimate of number of transcribed pages: 175

E. IS APPELLEE (CROSS-APPELLANT) WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE APPEAL BY PREDECISIONAL CONFERENCE UNDER COURT OF APPEALS RULE 3.7 IF OFFERED THE OPPORTUNITY?

Yes	No
X	____

F. IS APPELLANT AGREEABLE TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER COURT RULE? (Fast Track)

Yes	No
X	____

G. NAME OF COUNSEL

ATTORNEY FOR APPELLANT:
Name: James W. "Bill" Berry
Firm: James W. "Bill" Berry & Associates
Address: 2500 First City Place, Oklahoma City, OK 73102
Telephone: 405/236-3167

ATTORNEY FOR APPELLEE:
Name: Tom M. Cummings
Firm: Berry & Berry, P.C.
Address: 1923 Classen Blvd., Oklahoma City, OK 73106
Telephone: 405/235-4381

H. DATE: July 27, 1983
Verified by: /s/ Tom M. Cummings

TOM M. CUMMINGS
Attorney for
Appellee/
Cross-Appellant

I. AFFIDAVIT OF MAILING TO APPELLANT (CROSS-APPELLEE) AND DISTRICT.

I hereby certify that a true and correct copy of the above and foregoing Petition in Error and Preliminary Statement was mailed this 27th day of July, 1983, to James W. "Bill" Berry, James W. "Bill" Berry & Associates, 2500 First City Place, Oklahoma City, Oklahoma 73102, by depositing it in the U.S. Mails, postage prepaid.

If further certify that a copy of the above and foregoing Petition in Error was mailed to the Office of the Court Clerk of Hughes County for filing on the 27th day of July, 1983.

/s/ Tom M. Cummings

TOM M. CUMMINGS

HUCHES

IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

Bryor — Plaintiff(s) — Berry — Attorney(s) for Plaintiff(s)

—vs— Case No C81-270

Pryor — Defendant(s) — Cummings — Attorney(s) for Defendant(s)

COURT MINUTE

Date: 27 June 83 **Judge** Trimble

Judgment for the plaintiff as per journal entry.

Preston Trimble
Judge

FILED
HUGHES COUNTY
JUL 1 1983
LOIS MERCHANT, Court Clerk
By _____ Deputy

LOIS MERCHANT, Court Clerk for Hughes County, does hereby certify that the foregoing is a true, correct and complete copy of the Court Minute as set out as appears of Record in the Court Clerk's Office of Hughes County, Oklahoma
This 1st day of July, 1983
_____ Court Clerk
By _____ Deputy

EXHIBIT "A"

EXHIBIT "B"

The parties herein were divorced in Hughes County, Oklahoma, on July 6, 1979. On September 4, 1981, two years and two months after the Decree was entered the plaintiff filed a Petition to Vacate the Decree of Divorce on two grounds. The first ground was that the agreed alimony provision was void because it was terminable on grounds other than those allowed by law and the total amount to be paid by defendant was not a sum certain. Secondly, the Petition alleged that the Decree was voidable because of the defendant's alleged fraud. The plaintiff, Dolores, did not allege as grounds for vacation of the Decree irregularity in obtaining a judgment. Prior to the parties entering into the settlement agreement, Dolores was given access to all the financial books and records of her husband, Victor, and Dolores and Victor discussed the settlement at great length. Dolores specifically agreed to the support alimony arrangement in which Victor was to pay to Dolores the sum of $2,000.00 per month but he was to receive credit toward that $2,000.00 per month support alimony payment from the income produced by Dolores' oil properties. Within two weeks after the entry of the Decree, Dolores discussed her feeling that the settlement was unfair with an attorney, Robert G. Grove, who advised her to seek the services of an attorney and an accountant if she believed that she had been shortchanged. At trial, Judge Preston Trimble found that the plaintiff had wholly failed to establish a prima facie case for fraud and found that the alimony provision was void for vagueness. The Court thereupon found that the defendant should pay the plaintiff a sum of $2,000.00 per month from the time of the divorce for a period of 20 years or until the death or remarriage of Dolores and that at the end of the 20 year period Victor should pay the arrearage which had accrued to date at the rate of $2,000.00 per month.

EXHIBIT "C"

1. The trial court erred in vacating the alimony portion of the Decree as void for vagueness or indefiniteness because the amount of support alimony awarded in the Decree was a definite amount.

2. The trial court erred in vacating the alimony portion of the Decree as void for vagueness or indefiniteness because the parties agreed to a certain arrangement for payment of alimony and the parties' agreement waives the application of 12 O.S. § 1278 and is therefore not required to be a definite amount.

85-1125

No. _____

Supreme Court, U.S.
FILED
JAN 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court Of The United States of America

OCTOBER 1985 TERM

VICTOR W. PRYOR,
Petitioner,
vs.
DOLORES PRYOR,
Respondent.

BRIEF FOR RESPONDENT

JAMES W. BILL BERRY,
Counsel of Record
MARY M. JOHNSON
JAMES W. BILL BERRY & ASSOCIATES
Attorneys for Respondent
2500 First City Place
Oklahoma City, Oklahoma 73102

January, 1986

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Key v. Key, 388 P.2d 505 (Okla. 1963) 3

Steincamp v. Steincamp, 593 P.2d 495 (Okla. 1979) 3

STATEMENT OF THE CASE

The petitioner, VICTOR PRYOR, in presenting his statement of the case, has made a representation to this Court that the Oklahoma Court of Appeals, Division 4, reversed the trial court's sustaining of Mr. Pryor's demurrer. This representation is false. The Court of Appeals did not reverse any judgment of the trial court but instead merely further modified the original divorce decree and judgment of the trial court in order to correct the 'considerable inequity' of the original alimony provision.

SUMMARY OF ARGUMENT

Petitioner has argued in his Petition for Writ of Certiorari that he has been deprived due process of law under the Fourteenth Amendment to the United States Constitution in four areas, none of which has merit.

The Oklahoma Court of Appeals, Division 4, rendered an opinion which is neither a novel nor erroneous interpretation of the equitable law in Oklahoma. The Oklahoma Court of Appeals, Division 4, did not selectively apply the Oklahoma statutes of limitation.

The Oklahoma Court of Appeals, Division 4, properly held that special consideration and careful scrutiny should be made where parties to a divorce proceeding are not each represented by counsel and where one of the parties (petitioner) is a licensed practicing attorney.

Finally, the decision of the trial court granting petitioner's demurrer was not reversed but instead, the Court of Appeals determined that the original decree and trial court's decision must be further modified to effect a fair and equitable result.

ARGUMENT

RESPONSE TO ARGUMENT I

The Petition for Writ of Certiorari filed herein contains the text of the statutes governing the establishment and authority of the Court of Appeals of the State of Oklahoma. The citizens of Oklahoma via the Oklahoma legislature have established this appellate court system which has the power to dispose of any cases assigned to it by the Supreme Court of Oklahoma. Decisions rendered by the appellate courts are not appealable but may be reviewed by the Supreme Court if Certiorari is granted. The statutes provide that opinions of the Court of Appeals which apply settled precedent and do not settle new questions of law shall not be released for publication in the official reporter. 20 Okla. Statutes, 1981, Section 30.5, Laws, 1970 C.247, Section 5.

The case at bar does not create precedent nor does it settle any new question of law. The appellate court, in its opinion, applied sound principles of law as established by the Oklahoma Supreme Court. Particularly appropriate cases cited and used by the Court of Appeals in its opinion include *Chapman v. Chapman*, 692 P.2d 1369 (Okla. 1984) for the proposition that a vacation claim may be instituted more than two (2) years

after judgment by an independent suit in equity where suit is predicated upon extrinsic fraud practiced by the successful part. *Key v. Key,* 388 P.2d 505 (Okla. 1963) and *Bradshaw v. Bradshaw,* 578 P.2d 762 (Okla. App. 1977) holding that a miminal showing of undue influence or unfair advantage would justify a court in equity in setting aside the contract which purported to settle their property rights.

The Court of Appeals did not set new precedent and did not impose a different duty upon Mr. Pryor. The Oklahoma Supreme Court's denial of Certiorari in this action did not deprive petitioner of due process of law and was in fact the proper and appropriate action to take.

RESPONSE TO ARGUMENT II

Established statutes and caselaw in Oklahoma prudently provide for the limitation of actions in various legal proceedings to balance and protect the interests of the parties therein. Respondent originally institued this equitable action to vacate parties' divorce decree upon certain grounds including material misrepresentation and that because the decree did not set alimony in a sum certain, the decree was void. *Steincamp v. Steincamp,* 593 P.2d 495 (Okla. 1979). The trial court vacated the alimony portion of the decree and modified same. Respondent appealed the trial court's decision and this appeal resulted in the Court of Appeals' further modification to effect a just and equitable settlement of the parties' rights.

Petitioner claims that the enforceability of the statute of limitations was suspended by the courts in correcting the gross injustices contained in the original

decree. However, the appellate court provided sound reasoning for its action in applying the Oklahoma Supreme Court's principles enunciated in *Chapman v. Chapman,* 692 P.2d 1369 (Okla. 1984). Further, the original decree required modification since portions therein were void for indefiniteness and the statute of limitation does not and cannot apply to a void judgment. 12 Okla. Statute 1981, Section 1038.

RESPONSE TO ARGUMENT III

The facts attendant to this divorce case clearly mandated close scrutiny by the Oklahoma Courts. The original divorce decree was entered into after a 26 year marriage. Petitioner, who had been a practicing attorney for approximately 14 years, prepared the petition and decree after discouraging respondent from hiring outside counsel and informing her that she was entitled to one-half (1/2) of the estate. Petitioner's net worth at the time of divorce was $1,431,000.00, yet respondent received property valued at approximately $200,000.00, or less that 15% of the value of the marital estate. There was overwhelming evidence which revealed that petitioner unduly influenced his wife, thus gaining an unfair advantage over her.

As a practicing attorney in Oklahoma, petitioner should be aware of the ethical and moral obligations imposed upon him in a lawsuit where his own business and financial interests are at issue. This is especially important when the opposing party (his wife) retained no independent legal counsel at his own urging.

Petitioner's complaint that his due process rights

under the Fourteenth Amendment were violated is wholly without merit. His grossly improper conduct in preparing an inequitable and void judgment mandated this court's close scrutiny and subsequent modification.

RESPONSE TO ARGUMENT IV

Petitioner testified at great length in the trial of this proceeding. Indeed, it is in great part his own testimony that persuaded the appellate court to modify the judgment on appeal as the court's opinion indicates. The value of the marital estate was not in dispute in that petitioner's own valuation was used. Nor did petitioner deny that respondent was entitled to one-half (1/2) of the estate, which amount was ultimately awarded to her.

The question of law as to whether or not the decree was properly vacated is addressed in full in the appellate court's opinion.

The Court of Appeals did not reverse petitioner's demurrer, but, instead, further modified the decree in order to conform to the great weight of the evidence. To do otherwise would have resulted in great injustice.

CONCLUSION

In conclusion, respondent respectfully prays that the Supreme Court of the United States of America decline jurisdiction for Mr. Pryor's petition for Writ of Certiorari.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing instrument was mailed to Tom Cummings, Attorney for Petitioner, 1515 Classen Boulevard, Suite 100 East, Oklahoma City, Oklahoma 73106, on the_____ day of January, 1986.

JAMES W. BILL BERRY